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**THE FORMS OF WAR GOVERNMENT  
IN FRANCE**

ECONOMIC AND SOCIAL HISTORY  
OF THE WORLD WAR

JAMES T. SHOTWELL, LL.D., *General Editor.*

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TRANSLATED AND ABRIDGED SERIES

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*For List of Editors, Publishers, and Plan of Series  
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THE  
FORMS OF WAR GOVERNMENT  
IN FRANCE

BY  
PIERRE RENOUVIN

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## EDITOR'S PREFACE

IN the autumn of 1914, when the scientific study of the effects of war upon modern life passed suddenly from theory to history, the Division of Economics and History of the Carnegie Endowment for International Peace proposed to adjust the program of its researches to the new and altered problems which the war presented. The existing program, which had been prepared as the result of a conference of economists held at Berne in 1911, and which dealt with the facts then at hand, had just begun to show the quality of its contributions; but for many reasons it could no longer be followed out. A plan was therefore drawn up at the request of the Director of the Division, in which it was proposed, by means of an historical survey, to attempt to measure the economic cost of the war and the displacement which it was causing in the processes of civilization. Such an "Economic and Social History of the World War," it was felt, if undertaken by men of judicial temper and adequate training, might ultimately, by reason of its scientific obligations to truth, furnish data for the forming of sound public opinion, and thus contribute fundamentally toward the aims of an institution dedicated to the cause of international peace.

The need for such an analysis, conceived and executed in the spirit of historical research, was increasingly obvious as the war developed, releasing complex forces of national life not only for the vast process of destruction, but also for the stimulation of new capacities for production. This new economic activity, which under normal conditions of peace might have been a gain to society, and the surprising capacity exhibited by the belligerent nations for enduring long and increasing loss—often while presenting the outward semblance of new prosperity—made necessary a reconsideration of the whole field of war economics. A double obligation was therefore placed upon the Division of Economics and History. It was obliged to concentrate its work upon the problem thus presented, and to study it as a whole; in other words, to apply to it the tests and disciplines of history. Just as the war itself was a single event, though penetrating by seemingly unconnected ways to the remotest parts of the world, so the analysis of it must be developed

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according to a plan at once all embracing and yet adjustable to the practical limits of the available data.

During the actual progress of the war, however, the execution of this plan for a scientific and objective study of war economics proved impossible in any large and authoritative way. Incidental studies and surveys of portions of the field could be made and were made under the direction of the Division, but it was impossible for obvious reasons to undertake a general history. In the first place, an authoritative statement of the resources of belligerents bore directly on the conduct of armies in the field. The result was to remove as far as possible from scrutiny those data of the economic life of the countries at war which would ordinarily, in time of peace, be readily available for investigation. In addition to this difficulty of consulting documents, collaborators competent to deal with them were for the most part called into national service in the belligerent countries and so were unavailable for research. The plan for a war history was therefore postponed until conditions should arise which would make possible not only access to essential documents, but also the coöperation of economists, historians, and men of affairs in the nations chiefly concerned, whose joint work would not be misunderstood either in purpose or in content.

Upon the termination of the war, the Endowment once more took up the original plan, and it was found with but slight modification to be applicable to the situation. Work was begun in the summer and autumn of 1918. In the first place a final conference of the Advisory Board of Economists of the Division of Economics and History was held in Paris, which limited itself to planning a series of short preliminary surveys of special fields. Since, however, the purely preliminary character of such studies was further emphasized by the fact that they were directed more especially toward those problems which were then fronting Europe as questions of urgency, it was considered best not to treat them as part of the general survey, but rather as of contemporary value in the period of war settlement. It was clear that not only could no general program be laid down *a priori* by this conference as a whole, but that a new and more highly specialized research organization than that already existing would be needed to undertake the Economic and Social History of the War, one based more upon national grounds in the first instance, and less upon purely international coöperation. Until the facts of



national history could be ascertained, it would be impossible to proceed with comparative analysis; and the different national histories were themselves of almost baffling intricacy and variety. Consequently the former European Committee of Research was dissolved, and in its place it was decided to erect an Editorial Board in each of the larger countries and to nominate special editors in the smaller ones, who should concentrate, for the present at least, upon their own economic and social war history.

The nomination of these boards by the General Editor was the first step taken in every country where the work has begun. And if any justification were needed for the plan of the Endowment, it at once may be found in the lists of those, distinguished in scholarship or in public affairs, who have accepted the responsibility of editorship. This responsibility is by no means light, involving as it does, the adaptation of the general editorial plan to the varying demands of national circumstances or methods of work; and the measure of success attained is due to the generous and earnest coöperation of those in charge in each country.

Once the editorial organization was established there could be little doubt as to the step which should be taken in each instance toward the actual preparation of the history. Without documents there can be no history. The essential records of the war, local as well as central, have therefore to be preserved and to be made available for research in so far as is compatible with public interest. But this archival task is a very great one, belonging of right to the governments and other owners of historical sources and not to the historian or economist who proposes to use them. It is an obligation of ownership; for all such documents are public trust. The collaborators on this section of the war history, therefore, working within their own field as researchers, could only survey the situation as they found it and report their findings in the form of guides or manuals; and perhaps, by stimulating a comparison of methods, help to further the adoption of those found to be most practical. In every country, therefore, this was the point of departure for actual work; although special monographs have not been written in every instance.

The first stage of the work upon the war history, dealing with little more than the externals of archives, seemed for a while to exhaust the possibilities of research, and had the plan of the history

been limited to research based upon official document, little more could have been done, for once documents have been labelled "secret" few government officials can be found with sufficient courage or initiative to break open the seal. Thus vast masses of source material essential for the historian were effectively placed beyond his reach, although most of it was quite harmless from any point of view. While war conditions thus continued to hamper research, and were likely to do so for many years to come, some alternative had to be found.

Fortunately such an alternative was at hand in the narrative, amply supported by documentary evidence, of those who had played some part in the conduct of affairs during the war, or who, as close observers in privileged positions, were able to record from first or at least second-hand knowledge the economic history of different phases of the Great War, and of its effect upon society. Thus a series of monographs was planned consisting for the most part of unofficial yet authoritative statements, descriptive or historical, which may best be described as about half-way between memoirs and blue-books. These monographs make up the main body of the work assigned so far. They are not limited to contemporary war-time studies; for the economic history of the war must deal with a longer period than that of the actual fighting. It must cover the years of "deflation" as well, at least sufficiently to secure some fairer measure of the economic displacement than is possible in purely contemporary judgments.

With this phase of the work, the editorial problems assumed a new aspect. The series of monographs had to be planned primarily with regard to the availability of contributors, rather than of source material as in the case of most histories; for the contributors themselves controlled the sources. This in turn involved a new attitude toward those two ideals which historians have sought to emphasize, consistency and objectivity. In order to bring out the chief contribution of each writer it was impossible to keep within narrowly logical outlines; facts would have to be repeated in different settings and seen from different angles, and sections included which do not lie within the strict limits of history; and absolute objectivity could not be obtained in every part. Under the stress of controversy of apology, partial views would here and there find their expression. But these views are in some instances an intrinsic part of the history

itself, contemporary measurements of facts as significant as the facts with which they deal. Moreover, the work as a whole is planned to furnish its own corrective; and where it does not, others will.

In addition to the monographic treatment of source material, a number of studies by specialists are already in preparation, dealing with technical or limited subjects, historical or statistical. These monographs also partake to some extent of the nature of first-hand material, registering as they do the data of history close enough to the source to permit verification in ways impossible later. But they also belong to that constructive process by which history passes from analysis to synthesis. The process is a long and difficult one, however, and work upon it has only just begun. To quote an apt characterization; in the first stages of a history like this, one is only 'picking cotton.' The tangled threads of events have still to be woven into the pattern of history; and for this creative and constructive work different plans and organizations may be needed.

In a work which is the product of so complex and varied coöperation as this, it is impossible to indicate in any but a most general way the apportionment of responsibility of editors and authors for the contents of the different monographs. For the plan of the History as a whole and its effective execution the General Editor is responsible; but the arrangement of the detailed programs of study has been largely the work of the different Editorial Boards and divisional Editors, who have also read the manuscripts prepared under their direction. The acceptance of a monograph in this series, however, does not commit the editors to the opinions or conclusions of the authors. Like other editors, they are asked to vouch for the scientific merit, the appropriateness, and usefulness of the volumes admitted to the series; but the authors are naturally free to make their individual contributions in their own way. In like manner the publication of the monographs does not commit the Endowment to agreement with any specific conclusions which may be expressed therein. The responsibility of the Endowment is to History itself—an obligation not to avoid but to secure and preserve variant narratives and points of view, in so far as they are essential for the understanding of the war as a whole.

\* \* \* \* \*

For the most part, the text of the volumes of the various national series has been prepared in the language of the country concerned;



and, as will be seen by reference to the "Outline of Plan" at the end of this volume, these texts with but few exceptions are published in their original languages. The most notable variation from this rule has been in the case of the Russian series, which, for the present at least, will be published only in English translation. There has also been some translation prior to publication, the aim being to present the entire body of the History of the War in the major languages of Europe: English, French, German or Italian, with the possible addition of Spanish if the scope of the history were extended in the direction of the Spanish-speaking countries.

In addition, however, to these original texts, a limited number of volumes of the European continental series are published by the American publishers in abridged and slightly modified translation. This "Translated and Abridged Series" has been prepared solely with regard to its possible usefulness for those who do not readily use the originals. It is therefore necessarily limited to volumes dealing with the more general subjects, such as the effect of the war upon the agriculture or manufactures of a country, and excludes the more special topics, like the treatment of individual industries, which would interest few except those who already know the language of the original study. This rule has been departed from in some instances in order to present to American or English readers data of peculiar interest which nevertheless come from a restricted field. The application of this criterion of usefulness naturally leaves the "Translated and Abridged Series" somewhat lacking in symmetry, in view of the fact that the British series and others (like the Russian and Japanese) originally appearing in English, are already available, without further editorial modification or abridgment.

The first volumes to appear in the abridged English translation deal with subjects of great importance, the effect of the war upon French industry, agriculture and food supply. There are similar surveys of the mechanism of government control in war-time, of the social and material disturbances due to invasion, and of the doubly vexed question of France's war finance. Studies in Austrian and German war history and of that of the smaller nations parallel those of France, Belgium and Italy. These translated volumes, however, cover but a fraction of the field surveyed in the more special researches. Moreover, it should be noted that the more general monographs selected for translation are themselves the result of independ-

ent original research and are not dependent for their data upon the accompanying special studies prepared for more technical readers. This method of work, forced upon the authors by the exigencies of the scientific method, has sometimes led to seemingly different conclusions. But a careful examination of these apparent discrepancies will show that the ultimate synthesis is merely enriched by the consideration of variant aspects of a problem so vast and so elusive that no one statement, especially if cast in statistical formula, is adequate even to describe its terms.

J. T. S.





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## INTRODUCTION

THE changes in the system of government during the war of 1914-18 do not present the same character in France as in the States of Central Europe and in the British Empire. The political and administrative institutions in the former preserved, outwardly, their normal features. The needs of the emergency gave rise to modifications only of detail, which affected the spirit of the political life, while respecting its form.

The framework of the following sketch does not require lengthy explanation. To what extent did the war modify the organization of the central administration, the traditional franchises, the relations of the public powers?<sup>1</sup> Were these modifications foreseen and defined before the war? Were they in the nature of emergency measures? Did they disappear, in law and in practice, when the crisis came to an end? These are the questions that I endeavor briefly to answer, so as to set before the reader the conditions in which the various services, which are to be described in the volumes of this series, carried out their tasks. It was therefore useless to describe here the *details* of the working of the war administration; nor was there any occasion to attempt to give, in respect of each of the subjects dealt with, a complete enumeration of the measures adopted and the methods employed. What follows is neither a summary of war legislation, nor a picture of the working of the great public services. These will find their place, for the most part, in the monographs written by specialists who have had personal knowledge and direct experience of the various branches of war administration.

We must therefore not conceal from ourselves the artificial and inadequate character of such an attempt at synthesis as we have in this work. The information at our disposal is very dispersed, and works on the subject are still rare.<sup>2</sup> Each of the subjects that are briefly dealt with here deserves prolonged investigation. When we

<sup>1</sup> The expression "*pouvoirs publics*" or public powers is repeatedly used in this work to signify the legislature, the executive, and the judicature. [Translator's note.]

<sup>2</sup> I have referred in notes, in the course of this monograph, to most of these works—to those at least which I have found most useful.



are dealing with political or administrative institutions, the legal decision is not what is most important, but the practical application, which is often very different. If the archives of the public services have been partially laid open to the collaborators of the *Economic and Social History of the World War*, the vital documents of the Departments of Public Security, of the Censorship, of the Headquarter Staff, are still inaccessible; without these it is impossible to arrive at the true motives and the exact effects of the changes in government organization. It may at least be suspected that if one investigated the motives of this or that measure of principle which appears strange or obscure, one would frequently find at the root of it some personal question, some individual predilection, some conflict of influence. A decree may be only a cloak that covers some bargain. I do not mean that this was frequently so; I certainly do not suggest that it occurred only in France. In no country is the history of institutions easily distinguished from that of politics. These remarks are made merely to point out the lacunae in a work which I should wish to make, not a mere legal analysis of institutions, but a description of their evolution, but which, at the present time, cannot have more than a purely tentative character.

# FORMS OF WAR GOVERNMENT IN FRANCE

## CHAPTER I

### THE ORGANIZATION OF THE PUBLIC POWERS AND THE IDEA OF WAR

#### *I. The forms of the democratic régime.*

IN 1914, on the eve of the war, the forms of the democratic régime had attained a position of equilibrium and stability. Since the organic and constitutional laws of 1884,<sup>1</sup> there had been no important change in the administration and government of France. Thirty years had passed during which the Republic had touched neither the principles of its parliamentary régime nor the bases of its administrative organization. France had not known so long a period of rest since the great revolutionary crisis.

1. *The administrative system*<sup>2</sup> had retained the foundations which, after the vicissitudes of 1789 and the year III, had been laid down by the law of the 28th *pluviôse* of the year VIII, *viz.*: the department, the *arrondissement*,<sup>3</sup> and the commune. During the whole of the nineteenth century, the very organisms continued unchanged: the prefect and general council, the subprefect and council of the *arrondissement*, the municipal council and the mayor. But under this appearance of immutability, the administration of France was far from remaining the same. The law of

<sup>1</sup> Laws of the 14th-15th August 1884, enacting a partial revision of the Constitution; of the 9th-10th December 1884, on the organization of the Senate; of the 5th-6th April 1884, on the municipal councils.

<sup>2</sup> It has seemed advisable, although this work is devoted to the organization of the government, to recall briefly, especially for the benefit of foreign readers, the principles of French administrative organization.

<sup>3</sup> The *département* (administered by the prefect and general council) is divided into three or four *arrondissements* administered by the subprefect and the council of the *arrondissement*. The *arrondissement* is subdivided into *cantons* (mainly a judicial and electoral area), and these in turn into *communes*, administered by the mayor and municipal council.

[Translator's note.]

the year VIII had established a system of absolute centralization. The authority of prefects and mayors, who were named by the central Government, was unrestricted by any expression of the popular will. Nor were the councils that assisted them called upon to represent the opinion of the public; they too were constituted by the Government, which selected their members. The citizen at that time took not the slightest part in the administration of his own affairs. Then little by little, by slow stages, centralization had given way: general councils and municipal councils had, under the laws of 1831 and 1833, become elective. Their functions had been extended.<sup>4</sup> Finally, when the Republic was established, there had been further progress: the prefect, since 1871, has acted under the supervision of a delegation of the general council, the departmental commission. And the mayors, since 1884, except in Paris, have been appointed by election. Thus the rigor of the principles has been softened down by a series of adjustments, and we must not allow the persistence of names and institutions to deceive us. The administrative system of 1914 has but slight resemblance to that of the year VIII.

But much remains to be done in the organization of local liberty. The reforms have altered the complexion of the councils, and have given the mayors a support in public opinion, but they have hardly touched the rôle of the prefect. The elective assemblies of the commune and the department consider questions connected with local administration and take decisions; they vote a budget. But these decisions have in themselves only a relative value: in many cases the representative of the central authority, the prefect, must intervene to approve them<sup>5</sup> and to secure their execution. This is the system of administrative tutelage, which enables the Government to restrain the independence of the local assemblies and to guide their action.

Here is the commune: its municipal council is required to settle 'all business' concerning its territory—administration of the property of the commune, erection and maintenance of communal buildings, management of the municipal services. But when a decision has been taken, the mayor is not empowered to give immediate effect

<sup>4</sup> Laws of 1836-37, and of 1866-67.

<sup>5</sup> This approval is generally tacit. His express authority is required only for certain financial matters.

to it; the prefect, representative of the Government, must be given an opportunity of exercising his control. In theory, it is enough that the decision should be communicated to him; if within a month the prefect has raised no objection, the vote of the municipal council becomes valid. The decision is accordingly definitive, but is liable to be annulled. This is a legitimate precaution, designed to prevent the communal assembly from exceeding its functions or its powers. The prefect's intervention cannot be the outcome of caprice; it must be founded on an infringement of the law or the regulations. This is the normal system. In certain cases, however, when important matters are involved which may affect the pecuniary interests of the inhabitants—vote of the communal budget, sale of a communal building, or when a loan is contracted—there is a stricter tutelage. For the decision of the municipal council to become definitive, it must have the *express* approval of the prefect;<sup>6</sup> in certain instances, even, the authorization must be given by the legislature itself. The supervision exercised by the central Government is not confined to this simple approval—tacit or express—of the decisions of the municipal council. When the decision is carried into effect, when the mayor, who is charged with the duty of executing it, issues an *arrêté* regulating the water supply or poor relief, the prefect can still intervene, at any moment, to cancel the *arrêté* or to suspend its operation; he may take the place of the mayor, if the latter refuses or neglects to do something that the law requires him to do. In no respect does the government trust the inhabitants to *settle* their own affairs.

Here is the department: the general council, elected by universal suffrage, is charged by its fellow-citizens with the administration of their interests. It deals with the construction and maintenance of departmental roads, of local railway lines, and of departmental buildings; it sees to the working of public relief; and for these purposes it votes a budget.<sup>7</sup> But the decisions of the general council, like those of the municipal council, are subject to administrative control, which, within a period of two months, may lead to steps for their repeal, if the laws or regulations have been infringed; some of

<sup>6</sup> The cases where an *approval* is required are enumerated in Articles 68, 115, 140, and 151 of the law of 1884.

<sup>7</sup> In this general sketch I purposely omit the functions of the general council relating to taxation.



these decisions, those for instance relating to the budget, require the express approval of the government, which gives its authorization in the form of a decree. The authority of the departmental assembly is moreover restricted in another way; it cannot act without the co-operation of the prefect, whose duty it is to prepare the council's agenda and to carry out its decisions. If the prefect does not submit a particular matter to the assembly, it may protest and complain, but it is not entitled to deliberate on it. It is true, on the other hand, that between sessions of the council, a delegation thereof, the departmental commission, exercises a check on the financial administration of the prefect and supervises the working of his services.

This régime, which was the result of partial and incomplete reforms, was the object of relentless criticism by the partisans of a genuine decentralization. If it be admitted that the country ought to administer itself, ought not the general council to choose its own departmental administrator, in the same way as the commune chooses its mayor? Ought not the Government's control to be reduced, by an increase in the power of final decision assigned to the local assemblies? There was no lack of proposals of this kind during the thirty years that preceded the world war. But no substantial change was made in the system, so great was the fear that the local assemblies might perhaps encroach on the functions of the central Government, or that the outcome might be a conflict of authority.

This is only one aspect of the administrative system. The interests peculiar to the commune or the department lie within narrow limits—the working of a local railway, the erection of a village pump or a school. The maintenance of public order, on the other hand, the organization of the army, the manufacture of the nation's equipment, are questions of general interest, which necessarily fall outside the competence of the local assemblies. They must be dealt with by the Government. Alongside of these essentially State services, there are others that might, in the last resort, be left to local initiative, but which, according to present custom, form an integral part of the functions of the central authority: for instance, transport, mines, forests, and education. These have, in practice, become matters of common interest to the whole country, and the Parliament therefore deals with them, and the services relating to them are directed by the Ministers. Under their authority, the prefect in the

department, the mayor in the commune, have the duty of carrying out their decisions. The prefect supervises recruiting, directs the administration of the principal roads, the police, and the prisons; he appoints a large number of subordinate officials, such as school-masters and postmen. The mayor carries out measures of 'general security'; he is registrar of births, deaths, and marriages; lastly he is responsible for order in the commune, under the supervision of the prefect.<sup>8</sup>

The extent of the services dealt with by the State was tending to increase during the years that preceded the war of 1914. The law was intervening more frequently on behalf of the police authority; it was regulating ever more narrowly the conditions of labor; the working of a railway line by the State had led to the purchase by the State in 1908 of the Western system; the organization of old age insurance, savings banks, etc., had not been effected without administrative interference. Thus new public services were being created, and new officials were drawing salaries on the budget. And in spite of the protests of a few economists, public opinion on the whole accepted these encroachments, although there were frequent complaints of administrative formalities and delays.

There were accordingly two tendencies visible on the eve of the war, neither of which had yet entailed a reform of French institutions or administrative practice. On the one hand, there was the cry for decentralization: allow more initiative, give a wider sphere of action, to the general councils and municipal councils; avoid the need for the constant intervention of the Government and its direct representatives in the life of the department and the communes; trust those concerned to manage their own affairs, instead of smothering them with excessive tutelage. On the other hand, there was the watchword of State control: extend the control of administrative law over fresh spheres; the State alone can be trusted where important general interests are at stake; beware of private initiative, often dictated by selfish motives.

And, no doubt, these two tendencies may develop side by side, since their fields of action are different. One can conceive an extension of the domain of administrative intervention, while the Government, instead of laying down uniform regulations for the whole

<sup>8</sup> These functions are defined by Art. 92 of the Municipal Law.

country, allows the local assemblies to adapt the principles of the general system to the special needs of the districts and cities.

2. The *constitutional régime* was defined by the laws of 1875, and the alterations of detail were voted in 1882-84. The forms and the organisms of the constitution have a youthful look by the side of the forms and organisms of the administration. And yet the constitution of 1875, like the administrative system, was predominantly influenced by historical memories. It bears the mark of a series of discussions that had been proceeding since the beginning of the nineteenth century: it is in the nature of a compromise between the opposing tendencies which at that time divided public opinion and the theorists.

The constitutional instruments that formed the basis of the parliamentary Republic were the work of an assembly in which monarchical tendencies preponderated. The failure of the attempt at restoration in 1873 prevented the majority from giving effect to its wishes; and yet an end had to be put to the provisional régime that had been in force since 1870. But the Assembly did not believe that its work would endure very long. Without attempting to declare itself on the great fundamental constitutional problems, it dealt with them by means of compromises.

It wished the executive to have very wide functions. The President of the Republic promulgates the laws, and may, 'by a reasoned message' require the Chambers to 'deliberate afresh.' He negotiates and ratifies treaties, and communicates them to the Chambers 'as soon as the interest and security of the State admit of it'; treaties of peace, of commerce, treaties 'that commit the finances of the State,' or that involve a modification of territory, are definitive only after having been voted by the two Chambers; but treaties of alliance need not be communicated to the Parliament. Thus the President of the Republic is in theory master of foreign policy. It is he who disposes of the armed force. Finally, if he comes into conflict with the Parliament, the constitution gives him the right of dissolving the Chamber, provided that he is in agreement with the Senate. His powers, in principle, are at least equal to those of a constitutional monarch.

But there were other provisions that correct and limit this authority. The constitutional law, after having set up a strong executive, subordinated it to the legislature. It is the united Cham-



bers that elect the President; it is from them that he holds his power, not from the people; he cannot, therefore, claim to represent the national will in opposition to the Parliament. It is through the Ministers that he acts; he can do nothing without the counter-signature of one of them. No doubt he selects these Ministers; but as they are 'responsible' to the Chambers, he cannot maintain in power those who carry out his personal policy contrary to the will of the Parliament, unless he has recourse to dissolution.

It was in the same spirit that the constitution of 1875 dealt with the organization of the Chambers. The Chamber of Deputies and the Senate have almost symmetrical powers. The members of each assembly share in initiating and preparing legislation. The Chamber, however, has a prerogative in budgetary matters: finance laws must be submitted in the first instance to the Chamber. The Senate, on the other hand, may be constituted a Court of Justice to try the President of the Republic or the Ministers, and to deal with attempts on the safety of the State. But the chief object of the framers of the constitution, when they created two Chambers, was to make one of them serve as a check on the other. They effected this by opposing to the direct universal suffrage by which the deputies were to be elected, an indirect suffrage for the election of the senators, reserving the right of voting for these to the general councillors, to the councillors of *arrondissements*, and to delegates elected by the municipal councillors.

Even so, this half-hearted arrangement, in which contradictory tendencies balance one another, was careful to avoid any exact definition of the various powers. It is useless to try to find in it rules for creating a ministry: it does not even provide for the existence of a President of the Council of Ministers. It is useless to look to it for a definition of the rights of the Parliament, of its powers of control over the executive, or for an electoral system. The documents of 1875 are, in fact, merely a sketch, a 'table of contents,' as a French jurist has said.

It is therefore not surprising that the parliamentary republic should have undergone transformation in practice; and it will be worth while to indicate the general direction of these changes.

The working of the system, to begin with, has constantly reduced the authority of the President of the Republic. After the attempt of the 16th May 1877 and the check experienced by Marshal

Mac-Mahon, a dissolution, in the eyes of the public and of the Parliament, has assumed the aspect of a *coup d'état*, and successive Presidents have renounced the exercise of this constitutional right, the only procedure by which they may, for a time, resist the Chamber of Deputies. By the side of the Chief of the State, a new power has come into being, which is not mentioned in the constitution, the Cabinet Council and the President of the Council. The constitutional act speaks of 'the Ministers'; it does not suggest that one of them may have authority over his colleagues: it is the President of the Republic who naturally directs the deliberations of the assembled Ministers. But ministerial *solidarity* was soon to give rise to a quite different practice. Since the Ministers were 'jointly' responsible to the Chambers, they needed a leader who should represent them in the tribune. Now the constitution places the President of the Republic outside the sphere of parliamentary strife: he is not 'responsible'; nor is he empowered to take part in the debates. It was inevitable that the Ministers should group themselves about one of their number. This Minister, this President of the Council, becomes almost immediately the real head of the Government; it is he who in practice chooses his colleagues, when the head of the State has designated him to 'form the Ministry'; it is he who, independently of the Council of Ministers, may summon and preside over the 'Cabinet Council,' which the President of the Republic does not attend; it is he who exercises some of the prerogatives assigned by the constitution to the Chief of the State—negotiations and nominations. Of the two Presidents, which is the subordinate? It must be the President of the Republic who gives way, since he cannot form a new Ministry if the Parliamentary majority is not disposed to support it. 'I am the Queen of England,' said President Félix-Faure to M. Raymond Poincaré.<sup>9</sup>

The personal rôle of the head of the State depends therefore especially on the moral authority that he possesses. He may exercise an influence in the Council of Ministers, if he is familiar with the great questions of general interest and knows how to maintain the traditions. In the selection of a new Ministry, he can secure the appointment of a man who is not a leading personality and who is devoted to his policy; he can keep out of office, at any rate for a

<sup>9</sup> Letter of M. Raymond Poincaré to the *Temps*, 9th August 1920.

time, a man who is personally inimical to him. And this is a good deal. But if once circumstances oblige him to summon to the head of the Ministry an energetic and masterful President of the Council, his own influence is reduced practically to nothing.

The play of parliamentary institutions, moreover, has accentuated the subordination of the executive to the legislative power. The responsibility of the Government to the Chambers has been made the occasion for the constant intervention of members of the Parliament in administrative business. Questions and interpellations hold over the Minister the constant threat of a public debate. The investigations conducted by the parliamentary Committees—and especially by the Budget Committee—enable the Parliament to supervise the details of his administration. Constitutional practice favors these encroachments. They end in a continual interference by deputies and senators in the nomination of officials in their constituencies. It frequently happens that the prefect, the agent of the Government, is the servant of the politicians of his department.

But the 'responsibility' of the Ministers involves also the instability of the Government. The failure of the Cabinet to carry the majority with it on the least important matter suffices to bring about its fall. The assemblies like to make their power felt, and the rule of ministerial solidarity becomes tyrannical. Ministries pass in constant succession before the public, who remain strangers to these 'politics.' It is the Chambers that direct, or tend to direct, the activities of the State: between the heads of the public services, whose business is practical execution, and the members of the Parliament, who are prolific in suggestions and impulsions, the passing Ministers have no time for constructive work.

While the President of the Republic is obliged to give way to the President of the Council and to obtain the countersignature of a Minister to everything he does, the ministerial squad is constrained not only to yield to the will of the Parliament—which would be legitimate—but to suffer the encroachments of the legislature.

'The defect of the French Constitution' said a discontented prefect, 'lies rather in what it doesn't say and allows to be done . . . the stock is not so bad, it is the graft.' Custom and practice, which had been developing since 1875 and had reached their full expansion on the eve of the war, were dominated by the desire to secure the preponderance of the Chambers; but their tendency was to un-



nerve the executive, and to impair that continuity of opinion which is necessary for the conduct of national policy.

One must therefore constantly revert to the principle of the sovereignty of the nation in order to understand the essential features of the French system of administration and government. The will of the majority expressed itself through universal suffrage. In the national life, it dominated the executive; in regional and local life, its progress was less considerable; nevertheless the elective councils coöperated in the management of social and economic business; they limited and exercised a check on the authority of the prefect. Such was the theoretical scheme of the democratic State.

But the political life of France reposed, beyond these principles, on a wider and deeper basis: that of the rights of the individual, proclaimed in 1789. As against the authority of the State, the citizen demands guarantees for his liberty; and no régime has dared to neglect these. Even the constitution of 1852 recognized and confirmed them, violate them as it did in practice. And these liberties form so real a part of French public law that the constitutional enactments of 1875 did not think it necessary to recall them explicitly. But the Third Republic has set its seal to them. The law of the 29th July 1881 organized the liberty of the press; the law of the 22nd March 1884 determined the status of trade associations; the law of the 27th July 1875 extended freedom of teaching to the higher schools.

All these rules which protect the liberty of the individual against the authority of the State derived the practical support that was indispensable to them from the development of administrative jurisprudence. If an agent of the Government exceeded his rights or failed to observe the law, there was recourse against him to a special tribunal. No doubt it was not the Third Republic that created the *Conseil d'État*.<sup>10</sup> But it was on the basis of the democratic régime that this administrative High Court had enlarged its principles, and its sphere of action, that it had become a check on the bureaucracy, and that it admitted, with ever-increasing readiness, proceedings

<sup>10</sup> *Conseil d'État*. A tribunal composed of jurists and officials, which deals, among other matters, with questions of administrative competence. It was established in 1799.

[Translator's note.]

against officials for excess of their powers. The public liberties were becoming a reality.

## *II. Modifications provided in case of war.*

But war and liberty do not go well together. When the State is hard pressed, the individual recedes into the background. Respect for traditional rights involves considerate treatment and wide indulgences. War exacts strict discipline and prompt obedience; the central power requires a docile nation, animated with a spirit of union, under its hand. An increase of the Government's authority is the corollary of a crisis.

'War,' wrote Alexis de Tocqueville, '. . . cannot fail to add enormously to the functions of the civil government; almost inevitably it concentrates in the hands of the latter the direction of the whole population and the disposal of everything.'<sup>11</sup> This is well-established doctrine. But the men who drafted the constitution overlooked it; they made no provision for the organization of the public powers in case of war. The dispositions included in French law, destined to be applied at such a time, were sparse and fragmentary: their object was very limited and they did not attack the main problems of administration and government; they did not modify the normal relations between the executive and the legislature.

The Government finds in the law, to begin with, the means of maintaining internal order by more rapid and efficient methods: this is the *state of political siege* organized by the law of the 9th August 1849 and completed by the law of the 3rd April 1878. The state of siege may be declared 'in case of imminent peril, caused by a foreign war or armed insurrection.' To set it up, legislation is required. If the Chambers are not in session, the measure may be taken by decree; but the Parliament meets automatically, two days after, to deliberate on the matter.

The declaration of a state of siege has the effect of partially suspending the guarantees for individual liberty. The military authorities may carry out perquisitions at the domicile of citizens, they may require the surrender of arms and ammunition, they may prohibit publications that they deem likely to provoke disorder. Repression also becomes harsher: the civil population may be subjected to the jurisdiction of military courts, where crimes or offenses are in-

<sup>11</sup> *La démocratie en Amérique*, Vol. III, p. 452.

volved that threaten the security of the State or the strength of the army. And, before a court-martial, the guarantees that the accused ordinarily enjoys are restricted, the penalties more severe, the procedure more rapid. Public order profits; but what becomes of the liberty of the individual?

This exceptional régime has other consequences. The Government has recourse to the military for the exercise of all police powers—special as well as normal. It is no longer the prefect who has the duty of maintaining order, but the General Officer commanding the district; it is no longer the mayor who can issue *arrêtés* on matters of municipal police, but the local commandant. These officers, no doubt, will show more energy and vigor than the civil officials; no doubt, too, they will be less hampered by considerations of local politics or personal relations. The law, moreover, in authorizing them to exercise these powers, does not oblige them to do so to the full.<sup>12</sup> The mayor, for instance, retains the police powers of which he has not been *expressly* relieved by the military.

Care had been taken, when these exceptional powers were entrusted to the executive by the law of 1878, to limit their application; for as the events of the 16th May<sup>13</sup> were still so recent, the Parliament was anxious to provide against arbitrary action by the President of the Republic. It required that the departments subjected to a state of siege should be *enumerated* in the enactment, for it was not thought possible that the whole territory could be involved. It also required that the duration of the state of siege should be fixed, and that the Government should not be enabled to prolong it at pleasure. The Chambers, it was thought, would remain in session while the state of siege lasted: 'it is desirable that the legislature should be there to supervise the use made by the executive of its extraordinary powers.'

<sup>12</sup> Only the exceptional powers enumerated above (perquisitions, surrender of arms, etc.) pertain specially to the military authorities, who may in no case hand over the responsibility for them to the civil authorities. Cf. *Ministère de la guerre, instruction réglant l'exercice des pouvoirs de police de l'autorité militaire sur le territoire national en état de siège* (October 1913), Art. 8. (This order was to be kept secret until put into force.)

<sup>13</sup> On the 16th May 1877, a peremptory letter of censure from President Mac-Mahon caused the ministry of Jules Simon to resign, and the Chamber of Deputies was dissolved.

Within the framework of these general decisions, the Government had prepared, against a case of war, at least two special measures, connected with these police powers and with this state of siege. The object of the one was to reinforce the local police by calling on the inhabitants themselves; this was the organization of the 'Civil Guards.' The other was designed to render innocuous, when mobilization began, certain elements of mischief; this was the well-known institution of the *Carnet B* or black list.

The Civil Guards were to be a kind of citizen army. For the purpose of maintaining order, especially in large cities, the authorities would be empowered to form a corps of volunteers, who would be paid, wear a distinctive badge, and carry a weapon, and who would be placed under the direct orders, not of the mayor, but of the prefect. Indirectly therefore, in a state of siege, these Civil Guards might receive orders from the military authorities. This organization had been sketched out in August 1913, had been communicated by circular to the prefects, and notified to the mayors. A decree had been signed on the 7th January 1914, but when war broke out it had not yet been published in the *Journal Officiel*.

In anticipation of possible disturbances on the occasion of mobilization, the Government had had drawn up by the Ministry of War and the Ministry of the Interior a list of persons who might be considered a source of danger to national defense, some because they were suspected of being spies, others because they belonged to anti-militarist associations; this list was known as the *Carnet B*. It comprised 2,501 names on the 25th July 1914. All these persons were, in theory, to be arrested at the very moment when a general mobilization was decreed. This exceptional measure, however, gave rise to many objections, even among those whose duty it was to carry it out; at the last moment these objections were considered fatal to it.

The law also provided that the Government might, in case of war, exercise another important power—the right of requisition. The army cannot live without taking locally the commodities that it needs. To obviate the difficulties that had arisen during the war of 1870-71, a law of the 3rd July 1877, completed by subsequent enactments, had settled the procedure and regulated the right to indemnification. Officers of the supply or commissariat service were to notify the mayor of the commodities that they required and hand him a



written order; it was the mayor who distributed the charge among the inhabitants and delivered certificates to them, to serve as vouchers for repayment. But this system of expropriation, in the intention of the pre-war legislation, was to be applied solely *for the benefit of the army*. There was no idea of utilizing it for the needs of the civil population or to entrust the exercise of it to civilian officials. Requisition was a military act. In this, as in all other spheres, we see the anxiety to limit to a minimum the exceptions that a state of war entails on the rights of the individual.

There is, however, one public service which, in time of war, must be placed immediately and entirely at the disposal of the Government: it is that of the railways. From the first day of mobilization, the railway lines came under the orders of the military authorities. The whole railway staff was militarized. This measure was indispensable, because in the first place the success of the mobilization and concentration, and subsequently the supply of the army in the field, depended on the working of railway transport. In this respect, at least, the dispositions adopted with a view to war were sufficiently precise and complete to admit of their being applied as they stood, during the greater part of the hostilities.

Finally, in order to define the rights and powers of the Government in time of war, care had to be taken to determine the legal position as regards the supreme command of the army. The President of the Republic 'disposes of the armed force,' says the constitution of 1875. He would even have the right to command it, if he had the wish and the aptitude to do so. In practice he delegates the command. It is here that the difficulty begins. The Government, doubtless, is unwilling and unable to surrender the conduct of the war; the Government alone can decide the objects to be pursued; it alone can undertake the *political* direction of the military operations, which are bound up with the working of alliances and with diplomatic negotiations. The Council of Ministers as a whole will therefore be called upon to assume this responsibility: the Minister of War, who moreover is usually not a soldier, has no authority of his own apart from the Cabinet and the President of the Republic. The actual conduct of operations, on the theater of war, will naturally rest with the General appointed by the Government. The principle appears simple enough.

Its application is difficult. Is the civil authority, which lays down the main lines, to be excluded from the preparation of military operations? Is it entitled to examine the plans devised by the military command and to appreciate them? Or shall it rely entirely on the military chiefs? The Generals claim an absolutely free hand: secrecy of operations, promptitude of orders, vigor of execution, are incompatible, they say, with a system of discussion in which the inexpert would predominate. And yet the Government has the right to be thoroughly informed; it is its duty to exercise some supervision over those who have the fate of the country in their hands; it may even be that the intervention of a statesman, equipped merely with common sense and the critical spirit, may prove of some use as a counterpoise to professional prejudice. And this is only the first difficulty. Here is another: the Government, in the person of the Minister of War, takes the necessary measures, in peace-time, to prepare for war; he organizes supply; he sees to the manufacture of equipment and munitions. For this purpose he is assisted by a consultative committee, the Superior War Council. To what extent is the Minister of War to retain these functions when the army is mobilized? The military command will assume the direction of a part of these services; the distribution of powers must therefore be determined in advance. Finally, if operations develop on several distinct theaters, shall the coördination of military movements, the allocation of troops to the several fronts, be dealt with by the Government itself? Or shall it name a generalissimo for the purpose?

These were not merely technical problems, and the representatives of the nation insisted upon a voice in their solution. Those who adduced the advantages of a single military command, endowed with the widest possible liberty of action, were met with objections of a political order: the Republic had always dreaded a dictatorship. The legislature would be ready enough to exercise a direct control over the proceedings of the high command. On the eve of the war there were men in the army who feared that this might happen, and who warned the public of the danger.<sup>14</sup>

These subjects of concern had found their echo in the Parliament. In 1911 General Goiran, the Minister of War, had declared at the tribune of the Senate that the management of the war must

<sup>14</sup> Commandant Mordacq, *Politique et stratégie dans une démocratie*, Paris, 1912.

rest with the Government, assisted by the technical advice of a Chief of the General Staff. There would therefore be no generalissimo of the armies. The commanders-in-chief in the various theaters of operations would be under the immediate orders of the Minister of War.

This conception, which the Minister of War had been careful not to define too precisely, met with vigorous criticism from deputies of all parties. On the 23rd June, Admiral Bienaimé and General Pédoya insisted on the necessity for unity of command. M. André Hesse defended the system of a generalissimo: 'We have always believed,' said he, 'that from the outbreak of hostilities everyone, including the Minister and the Government, would defer to the authority of a supreme chief, designated beforehand. . . .' According to him, the Minister of War should be merely the head of the Supply and Intelligence services. 'You want to set up an Emperor,' shouted the Extreme-Left, and a Socialist deputy interposed a reminder of the 18th *brumaire*. It was, in fact, political arguments that dominated the discussion and determined the resistance.

But it was not a political argument that General Goiran adduced in his rejoinder: according to him the general command of the armies was 'beyond human capacity; I am of opinion that no single person is capable of commanding all the French armies.' Of course he refused to give details: the subject was 'secret'; but he laid down his principle clearly: 'the co-ordination of operations in the various theaters of war is a matter for the Minister of War and the Government.' Thereupon the majority of the Chamber went against him.

Nevertheless, it was this solution that was adopted, after two attempts at partial organization,<sup>15</sup> by the decree of the 28th October 1913: each 'theater of operations' was to have a commander-in-chief; unity was to be secured by the responsible executive authority. 'The Government indicates the *principal* adversary against whom the greater part of the national forces are to be directed. It divides the

<sup>15</sup> Decree of the 28th July 1911, followed by decree of the 20th January 1912, which were particularly concerned with the organization in time of peace of the General Staff services. Cf. A. Millerand, *Pour la défense nationale*, Paris, 1913, p. 109 *et seq.* Moreover a decree of the 14th June 1913 had provided for the creation of a superior Council of National Defence, that is to say for periodical meetings of the Ministers concerned. The preparatory work for this Council was to be done by a Commission appointed to study the various problems.



forces and supplies of all kinds accordingly, and places them at the *entire disposal* of the generals or admirals to whom the chief command in the several theaters of war has been entrusted."<sup>16</sup> But the predominance of the civil power—thus asserted in the political doctrine that prevailed on the eve of the war—must not be allowed to hamper the liberty of action of the military commanders. And so, as the operations were conceived as proceeding uninterruptedly, and the army in the field as a mobile organism in a region which it would merely traverse, care was taken to enable the headquarters staffs to provision it, to administer it, and to maintain order. The army 'services' were developed, at the expense of the normal functions of the Minister of War. The Field Service Regulation of the 2nd December 1913 laid down accordingly that on the outbreak of war a line of demarcation should be drawn between the 'interior zone,' subject to the authority of the Minister of War, and the 'army zone' placed under the authority of the military staff: here the administrative powers of the Minister were delegated to the army commanders, and the supply, railway, and medical services were placed, in the army zone, under the direction of the general officer commanding the troops in the field.

These were the principal modifications designed, in the mind of the legislator, to provide for the needs of a state of war. There were no special measures dealing with administrative organization, nor with the relations of the public powers one to another. Whether the municipal and general councils could continue working under the normal rules; whether the parliamentary system could function in the ordinary way; whether any change would be necessary in the constitution of the Ministries—these were questions to which the law had provided no answer. In short, the program reduced itself to this: to encourage, under the control of the Government, the initiative of the military departments, which would provide for the needs of the army and for the maintenance of order, while they would at the same time be responsible for military operations. The administrative regulations were, in their main lines, to hold good: but the personnel applying them would change. In having recourse

<sup>16</sup> The Vice-president of the Superior War Council, the Chief of the General Staff, assumes the command of the 'principal group' of armies. One of his principal assistants remains in Paris to help the Minister.



for this purpose to men whose whole way of life would naturally have instilled into them the quality of energy, the Government evidently intended to modify the spirit of the existing regulations in the direction of a stricter discipline, untrammelled by a constant concern for legality.

### *III. Opinions concerning 'war government.'*

If the problem of adapting the public powers to a state of war had not been more completely solved, this was not due to any lack of suggestions and proposals. General Boulanger had distinctly raised the question in 1887, when he claimed that, in case of war, senators and deputies of military age should be required to resign their seats.<sup>17</sup> Should military duty take precedence of political duty? According to the answer, the whole working of the Chambers in war-time might be altered. Projects were abundant, but the will to deal with them was wanting. No doubt everyone knew that parliamentary habits and constitutional rules would have to give way in face of war; and it would be prudent to foresee these changes and to regulate them in advance; but neither the Parliament nor even the Government, in the midst of profound peace, could adapt its mental attitude to a state of war. They shrank from opening a debate that would at once involve the very foundations of the political system. If perchance they were to resign themselves to such a discussion, the conclusions arrived at would be arbitrary: in a state of political calm it is impossible to ignore principles and theories; in a crisis, these obstacles disappear of themselves. The rules that the Parliament might propose to lay down in advance would very probably not meet practical requirements. Some questions are the better for not being put until they have to be answered. Such was the line of argument to which, during the years that preceded the war, the French public authorities surrendered.

And yet, ever since 1890, a basis of discussion had been available. M. Eugène Pierre, with all the authority derived from his position

<sup>17</sup> In answer to a question of the Comte de Martinprey, 15th February 1887. Cf. Mermeix, *Au Sein des Commissions*, pp. 3 and 4. But this view had met with no support. On the 21st March 1888, General Deflis, the *Rapporteur* of the Senate on the Recruiting Law, said on the contrary: 'Even in time of war—especially in time of war—the representation of the country must remain intact.'

and competence, had outlined in two pamphlets<sup>18</sup> a scheme of organization of the country in war time. He did not delude himself as to the fate of the public liberties. Expressions of opinion, he held, would be subjected to rigorous control. There would be no publication without the previous permission of the military authorities, no newspaper articles on the subject of military operations or diplomatic negotiations. The press would be fed on official *communiqués*.

The working of local administration would be governed by very special conditions. In the department, the general council would disperse after handing over its powers to the departmental commission; in the commune, the Government might appoint 'special delegates' by decree, if the municipal council could no longer assemble a quorum. The system of local elections would therefore be interrupted.

The Parliament itself would disappear. Deputies or senators of military age would join their corps. The Chamber would appoint a committee of 286 members; the Senate another committee of 153 members; these would coöperate with an executive. The Government would be empowered to legislate by decree after consulting the two committees on each draft. This was merely a personal proposal; it had the advantage of pointing out certain difficulties and certain ways of meeting them. Subsequent schemes did not fail to draw inspiration from it.<sup>19</sup>

It is precisely in the same year that we come upon the first parliamentary proposals in this connection. One of these<sup>20</sup> frankly proposed to enact, by a revision of the constitution, the suspension of the legislative power in war-time. Another<sup>21</sup> admitted that the Chambers should lose their members of military age, but suggested that substitutes should be appointed by the general councils. Lastly the bill proposed by MM. Le Veillé and Le Senne devised a sort of control attached to the armies: the Parliament would delegate cer-

<sup>18</sup> *L'organisation intérieure du pays en cas de guerre*; and *Du pouvoir législatif en cas de guerre*, Paris, 1890.

<sup>19</sup> The work of M. Dupuy, *L'état de guerre et ses effets vis-à-vis des ressortissants de l'État*, Paris, 1912, analyzes some of these schemes in its first chapter.

<sup>20</sup> Bill submitted by M. Castelin, 7th June 1890; it was taken up again on the 2nd December 1890.

<sup>21</sup> F. Rabier and C. Dreyfus, 7th June 1890.

tain of its members to the staffs of the Army Corps, and would receive their reports. None of these projects however was accorded a discussion.<sup>22</sup>

But at the end of 1894, on the proposal of General Yung, the Parliament seemed quite disposed to examine the question. A draft resolution submitted in the Chamber, on the 15th February 1895, by M. Gautier de Clagny and M. Marcel Habert laid down the principle that deputies should be liable to military service. This meant a reduction of the numbers of the Parliament; it was to reduce itself still further. The Chamber was to nominate thirty of its members, and the Senate twenty, who would form a 'Legislative Council of National Defence'; this body would exercise the legislative power without having the right of interpellating the Government; debates would be published. 'Surprise votes' and 'lobby intrigues,' said the authors of the scheme, must be abandoned; ministerial crises in particular must be avoided. The executive would be 'powerful and stable, unanimous, and rapid in decision.' How could it be supposed that the parliamentary régime was 'compatible with the requirements of national defense'? And yet to dispel this illusion and correct it, a partial revision of the constitution was required.

Almost on the same day<sup>23</sup> the Senate was confronted with a somewhat different proposal. The *Rapporteur*<sup>24</sup> on the Yung project, M. Joseph Fabre, did not altogether reject the idea of a 'delegation' of the Parliament, which should exercise the legislative power; but it was, in his eyes, only a last resource. The political mandate overrode military duty;<sup>25</sup> the Chambers must remain intact and retain their full functions; that was the true constitutional doctrine.

If however it should prove impossible to keep the deputies at their posts<sup>26</sup> and the Chambers in session, M. Fabre suggested the crea-

<sup>22</sup> The Committee charged with the duty of examining the Castelin and Rabier proposals decided against any idea of revising the constitution (5th July 1890, No. 794).

<sup>23</sup> February 22nd, 1895.

<sup>24</sup> When a commission or committee is set up in France, one member is appointed chairman, another '*rapporteur*.' The latter is charged with the duty of preparing the report. [Translator's note.]

<sup>25</sup> This was the unanimous opinion of the Committee.

<sup>26</sup> These ideas were expressed by M. Fabre in a further proposal of the 12th March and in a report of the 14th June 1895. In the interval the

tion of two committees, one comprising a sixth of the deputies, the other a sixth of the senators; these committees would express their views on legislative proposals, which would then be embodied in decrees; they would also deal with the credits asked for by the Government, but would have no right of interpellation.

The Government reserved its opinion; it was unwilling to settle the question of the military service of deputies and senators without at the same time bringing forward a general scheme for the organization of the public powers in case of war. It promised to have the matter 'considered.'

Ten years later, in a report on the war budget,<sup>27</sup> M. Klotz observed that this consideration had made no progress. 'And yet,' said he, 'if war supervenes, the Republic is at the mercy of the slightest misadventure.' Will the senators and deputies who are liable to mobilization join the colors? Probably. Will the Chambers, after losing part of their members, be able to legislate, or will they consent to delegate their power to a committee? Or again will they resign themselves to giving a kind of dictatorial power to a few persons? No solution was possible without the adoption of some constitutional enactment.

The discussion of the military law introducing the two years' military service had just then, in 1904, provided the Parliament with a fresh opportunity of taking the initiative.<sup>28</sup> M. Gautier de Clagny availed himself of it to revive the proposal for a revision of the constitution that he had submitted in 1895.<sup>29</sup> M. Maxime Lecomte examined and criticized the proposals of M. Joseph Fabre, which the Senate refused to include in the order of the day. The Minister of War, General André, developed a scheme,<sup>30</sup> according to which the legislative power would be exercised in war-time by a delegation of fifty members, elected by the National Assembly, but this delegation would be unable to initiate legislation; the executive

Chambers had refused to take a decision themselves as to the military duties of deputies in time of war.

<sup>27</sup> No. 1950, 13th July 1904.

<sup>28</sup> 27th June 1904, M. Guyot de Villeneuve's proposal.

<sup>29</sup> *Rapport* of M. Faillot on this proposal, No. 1832, 30th June 1914.

<sup>30</sup> Cf. the articles of General André in the *Matin*, 30th June, 1st-2nd July 1906: *Un régime de discussion permanente ne peut pas convenir à une période complotant surtout une action intensive et rapide.*



power would rest with a committee composed of a President of the Republic, the Presidents of the Chamber and Senate, and the Ministers concerned with national defense (War, Marine, Foreign Affairs), assisted by the Chiefs of the Military and Naval Staffs, who would sit in a consultative capacity. But the General did not venture to submit this project to the Council of Ministers, so greatly did he shrink from setting afoot a revision of the constitution: he kept the scheme in reserve, in order to get it voted 'abruptly' if there were a threat of a foreign crisis.

The Government, however, without risking a straightforward debate on the question of principle, decided in 1905 on a partial solution of the problem of the military service of deputies. The new recruiting law had granted a short postponement of service to the secretaries and shorthand-writers of the Chambers, in case of mobilization. Was it not just to adopt an analogous rule for members of the Parliament? The Minister of War<sup>81</sup> and the President of the Chamber had had two conferences on the subject, in July and December 1905. Their view was that members of the Parliament should be allowed eight days to join the colors, in the event of mobilization; deputies and senators would thus be able to take part in voting the most urgent legislation. It was this decision that was communicated to the Chamber on the 27th February 1906, as a result of a motion by the Marquis de Rosanbo.<sup>82</sup>

The determination to postpone any general examination of the question of 'war government' thus became manifest. In 1890, 1895, and 1904, all who took up the problem were of opinion that it could not be solved without a modification of the constitutional system, and all shrank from the idea of the revision which they declared indispensable.

In 1912, a few months after the Agadir crisis, a fourth attempt was made, but of quite a different character. This time there was no

<sup>81</sup> M. Berteaux. Cf. Eug. Pierre, editor, *Traité de droit politique electoral et parlementaire*, 1914, pp. 373-375.

<sup>82</sup> Although he belonged to the Right, M. de Rosanbo did not admit that the legislative power should be suspended during the crisis: 'This would be tantamount to saying that on the day of the declaration of war, the Republic ceased to exist.' *Débats*, 23rd January and 27th February 1906. But he was disposed to suggest revision with a view to 'adapting' the organization of the public powers in time of war.

question of an immediate vote, of settling the outlines of the future organization. M. Maxime Lecomte, the Vice-President of the Senate, developed an interpellation: 'How would France be governed in case of war?' Who would secure that 'powerful' and 'concentrated' organization of which everyone recognized the necessity? The constitution did not lend itself thereto; and yet, said M. Lecomte, it would be very difficult to get it revised in advance; the 'mental attitude' did not admit of it. But at least there ought to be a scheme ready, which the Chamber and the Senate, sitting together as a Congress, would vote in the first days of the war. Here was the opportunity for the Government to make known its intentions: the projects exist, M. Millerand, the Minister of War, told the Chamber. In fact there were several of them, 'some constitutional, others purely legislative.' The Council of Ministers had revised them. When the day comes, he added, 'circumstances will dictate the choice that will have to be made' among these. But as to the nature of these measures he gave no information. It was, therefore, not the Government's intention to submit them in advance to the appreciation of the Parliament. The Chamber was satisfied with these summary announcements, and did not attempt to discuss them.

War was to come without any more definite solution having been arrived at. Neither the position of deputies and senators in respect of the obligation to military service, nor the procedure of legislation, nor the exercise of the rights of Parliament in face of the executive power, had been regulated. And yet it was understood that the normal working of the régime would undergo certain modifications. It is a remarkable fact that in the majority of the schemes—even in that of General André—the idea that French institutions were capable of adaptation to a state of crisis was rejected. What changes would have to be adopted no one knew, and a state of ignorance was preferred. The attempt to determine them would involve the risk of a difficult debate; it was better to await the pressure of events, which would dissipate prejudice and opposition.

But, as a result of the declarations of the 6th June 1912, it was known that in the mind of the Government the measures of wide scope, which had been supported in various parliamentary quarters since 1890, were to be set aside. Adaptation to a state of war was to be effected by a series of adjustments, of practical steps, which would not *necessarily* conflict with constitutional enactments. And this was

certainly in harmony with the secret feeling of the Chambers, which had maintained so reserved an attitude toward these problems.

Certain political writers, however, contested the possibility of an adaptation of this kind. A régime that had unnerved the executive power, rendered cabinets unstable, and subordinated Ministers to Parliament, was not what was required for the conduct of a war. Delays in legislative work, bills recast in committees, sifted at public sittings, bandied to and fro between Senate and Chamber, were incompatible with the needs of a crisis. Why hamper oneself with a political organization that divided authority at the very moment when it required to be concentrated?

In military circles, even among those who were not hostile to the democratic system, there were doubts on the subject. Commandant Mordacq, who was to be during the war chief of the military office attached to the Presidency of the Council, and who was at that time professor at the *École de Guerre*, wrote in 1912<sup>33</sup> that 'war can be prepared and conducted with much greater ease in a monarchy than in a republic, merely because the principle of authority can be exercised in the former completely and with continuity.' It was difficult, in particular, 'to realize effectively' in a democratic system a unity of views and of direction between the civil power and the supreme command.

In political circles the book by Marcel Sembat made a great stir in 1913. 'Make a king,' said the socialist deputy, 'or make peace.' The republican régime and the idea of war were contradictory. War demands a very high degree of governing energy; whereas the Republic 'up to now has not even shown itself capable of successfully administering the country in peace.' How can victory be achieved when the preparations for war, involving 'secrecy,' 'dissimulation' and 'intrigue,' are in the hands of a Government afflicted with chronic instability? 'I do not believe,' he repeated, 'that you can ever extract from the Republic the qualities needed for a warlike policy.'<sup>34</sup>

Here were criticisms calculated to rejoice the monarchists. Had they not said this all along, and were they not still saying it? The Republic was incapable of having a foreign policy, because in a

<sup>33</sup> *Politique et stratégie dans une démocratie*, pp. 209 and 254.

<sup>34</sup> M. Sembat, *Faites un roi, sinon faites la paix*, pp. 27 and 73.

democratic government there was 'no one to sustain the continuity of the State'; but a nation 'requires to be continuous and coherent in time, just as its parts, its functions, its offices must cohere in space. This is more necessary in proportion as its task or *mission* is more difficult.' So wrote Charles Maurras in 1913.

In spite of the prophets, traditional institutions and practical requirements were, under the pressure of danger, to be brought into harmony.

. . . . .

The adaptation was effected by empirical measures, adopted one by one, under the stress of events. At a time of crisis 'institutions created for peace and liberty' survive with difficulty. They survived nevertheless. The rules of constitutional and administrative organization, so far as their letter was concerned, were modified only in details; in practice many a restriction had to be put up with, and much had to be surrendered.

War 'puts an end to liberty'; it suspends in part the guarantees that the individual enjoys, the fundamental rights of the citizen, even the exercise by the nation of its sovereignty. And the public is conscious of neither inconvenience nor resentment. On the contrary, it likes 'to feel itself governed.' The rights of the executive develop; the functions of Government are enlarged. The Government puts aside its customary solicitude; it maintains order and muzzles public opinion; it does not feel bound to keep its decisions in strict harmony with the law to which they are subject: it does as it pleases. These are the inevitable consequences of war. They manifested themselves at once. On the 4th August the Government obtained the approval of the Parliament to a whole series of emergency measures: a *general* state of siege, a moratorium, and authority to enact by decree what national defense might require. This was doubtless the program that was being kept in reserve, according to the statements of M. Millerand in 1912. We must examine these features of war government, as they affect the public liberties, the public services, and the Parliament respectively.

Originally the emergency régime was a military régime, dominated by the anxiety for the maintenance of order in the country: the war, it was thought, would be a short one; 'the rear' had merely to wait with composure. But the struggle dragged on; as the coun-



try became accustomed to the war, the police régime became lighter. The whole nation was now required to take its share in the effort and to work for victory. The Government had to take this into account; it could not afford to neglect the coöperation of the representatives of the sovereign nation. It endeavored, with their help, to adapt the whole economic life of the country to the emergency; the rôle of the State was enlarged to cover all forms of national activity; there was a multiplication of public services. The executive extended even further the sphere of its encroachments, by methods and for purposes different from those which it had at first pursued.

## CHAPTER II

### THE GOVERNMENT AND THE PUBLIC LIBERTIES

THE first consequence of the war—the only one that had been organized in its general lines by previous legislation—was to bring the public under stricter discipline, to place it in the grip of the Government. This had the effect of bracing the national strength to meet the common danger. The traditional liberties were eclipsed by the power of police, which it had been their usual function to restrain; the fundamental rights of the citizen—freedom of the domicile, liberty of the press, freedom of assembly—were now exercised only so far as the Government tolerated them, and in the restricted forms that it laid down. But this was not a régime of purely arbitrary rule. The law had provided for the *state of siege* and had determined the sacrifices to be required of the public. The action of the executive rested accordingly on the previous consent of the legislator: the Government took advantage of this to interpret its powers in the widest sense, and even at times exceeded the functions assigned to it. This is not surprising, for the danger of the State and the gravity of the crisis exceeded anything that could have been foreseen.

#### *I. Individual liberty and the state of siege.*

According to the law of the 3rd July 1878—which had completed that of 1849—the declaration of a state of siege set up an extraordinary régime, the application of which was entrusted to the military authorities. The mayors and prefects surrendered their police powers to the latter, if called upon to do so; citizens, moreover, were liable to domiciliary perquisition or to expulsion by simple police decision; and assemblies might be prohibited. But the *whole* territory had never been placed under this régime. In 1870-71 only some forty departments had been declared in a state of siege. It seemed natural therefore that the Government should bear these precedents in mind. Further, the existence of the *Carnet B*<sup>1</sup> gave it the means of eliminating at one stroke all those persons who ap-

<sup>1</sup> See above, p. 13.

peared to it capable of disturbing public order or impairing the moral unity of the country.

In practice, the régime applied was somewhat different from expectations. The measures taken by the Government extended to a wider area than had been anticipated; but the system was not at once pressed to its extreme consequences.

On the 2nd August 1914—the first day of general mobilization—the President of the Republic signed a decree placing *all* the departments of France and the three Algerian departments in a state of siege. It was necessary, said the explanatory preamble, ‘to concentrate all power in the hands of the military authority in the frontier zone and also throughout the national territory’; for ‘numerous detachments of men summoned to the colors’ were to be found collected in depots in all parts of the interior. This was the justification for the transfer of authority and the general extension of the measure. Precedents were now of no account, for never had there been a similar call on all the forces of the country.

The declaration of a state of siege involved automatically the meeting of the Chambers within two days. The summons addressed by the Government on the same day to the Parliament was therefore unnecessary.<sup>2</sup> Immediately on their assembling, the Chambers were to be invited to ratify the measure taken by the executive.

The law of the 5th August confirmed the decree; it decided that the state of siege should last throughout the war, but it empowered the President of the Republic to suspend it and reimpose it; the law was voted without discussion, like all the emergency measures proposed at that moment by the Government. It appears, however, that in the private meetings of the political groups the measure had met with some opposition.<sup>3</sup> It was certainly questionable from a legal point of view, since it gave an indefinite extension in space and time to the state of siege, whereas, according to the intention of the legislator, it was to be strictly limited in both. The Government was thus showing a disposition to interpret in the widest sense the prerogatives accorded to it. But was this a ground for complaint? The annoyance of a few theorists, devotees of the principles of lib-

<sup>2</sup> See on this point: Joseph Barthélemy, *Le droit public en temps de guerre*. (*Revue de Droit public*, January-March 1915.)

<sup>3</sup> Cf. Paul Meunier, *Rapport* of the 15th October 1915, *Chambre, Documents*, No. 1359.

erty, did not reveal itself in public session, for the great wave of confidence that carried the deputies off their feet would not have allowed them to give utterance to it.

Hardly had the Chambers dispersed when the Government adopted another measure, designed to complete the system of discipline. By a decree of the 10th August it declared a part of the territory 'in a state of war'; a second decree, of the 3rd September, extended this to the whole country. What were the facts? The *state of war* existed in reality in the northeastern departments; there the military command knew no limit to its authority; but everywhere else the declaration was a fiction. The sole purpose of the decree was to modify the procedure of courts-martial in the interior of the country, and to expedite repression.<sup>4</sup> From the point of view of administrative and police organization it was without importance, in spite of the stir that the title of the decree may have occasioned here and there.

By these measures then—declaration of *state of siege* and declaration of *state of war*—the executive, without much regard for the principles of public law, introduced innovations of detail that formed no part of the previous decisions of the legislature.

But it must be borne in mind that, in practice, these enactments merely provided the executive with certain means, certain possibilities of action. They gave it weapons against all eventualities. The Government did not intend to make full use of them unless compelled to do so. And in fact the application of this régime fell far short of what it threatened.

On the eve of the mobilization the question of the *Carnet B* had been submitted to the Council of Ministers. The Minister of the Interior thought such rigorous measures unnecessary; he was aware, it was true, of the existence of a 'plan to wreck the mobilization,' prepared in minute detail by persons whose names figured in the *Carnet B*, and to be carried out by them; but he was of opinion that, amid the surge of indignation and enthusiasm that prevailed, such crimes became improbable. The anarchist Almereyda assured him that the mobilization would take place without incident. By carrying out to the letter the instructions of the *Carnet B*, by arresting 'militants,' who might be violent syndicalists but not spies or traitors, in the mass, there was a risk on the contrary of annoying the working

<sup>4</sup> See below, p. 35.



classes and impairing the moral unity of the country. M. Malvy consulted others. He saw M. Clémenceau, who advised him to enforce the *Carnet B*. The Prefect of Police took the same view. The Director of General Security on the other hand, M. Richard, thought that these suspects should be trusted: 'when the regimental band passes they will follow,' he said.<sup>5</sup>

On the 31st July the Council of Ministers unanimously decided, on the motion of M. Malvy, not to put the *Carnet B* into force. 'I was of opinion,' said M. Viviani later, 'that it was impossible, when the working classes were marching to the frontier, to send a few of them into concentration camps. I was of opinion that it was impossible to apply the law of 1849.'<sup>6</sup> It was a daring decision. Who could be sure that this confidence would be justified? And yet it was. The mobilization was carried out more successfully than the Headquarter Staff even dared to hope.

This conciliatory measure was moreover very generously applied. The Council of Ministers intended to spare only the *militant syndicalists*. In the first instructions issued by him to the prefects at 2 P.M. on the 1st August, the Minister of the Interior had conformed with these instructions. He left the local authorities quite free to arrest anarchists and persons suspected of spying. But in a second telegram on the same day, M. Malvy had extended his indulgence to all Frenchmen inscribed in the *Carnet B*. Only foreigners suspected of spying were arrested on the first day of mobilization.<sup>7</sup>

If we leave aside the personal interpretation of M. Malvy, the political significance of this important decision is none the less clear. The Government wished to avoid any measure that might impair the unity of the nation, any harshness that might seem directed against one political party.

The working of the military régime was organized in a corresponding spirit, a liberal spirit, which sometimes departed a little from the rules of law, but which avoided irritating the mass of the

<sup>5</sup> Evidence of M. Richard in the Malvy case, hearing of the 23rd July 1918. *Revue des Causes célèbres*, p. 163.

<sup>6</sup> Evidence of M. Viviani in the Malvy case, hearing of the 29th July 1918. *Op. cit.*, p. 229.

<sup>7</sup> 'Having every reason to think that all persons inscribed in *Carnet B* for political reasons may be trusted, desire you to arrest no one belonging to these categories. Confine yourself to arresting foreigners inscribed as suspected of spying.' Cf. Malvy, *Mon Crime*, p. 39.

public. Doubtless, on several occasions, the agents of the executive exceeded the powers conferred on them by the state of siege: one saw generals invoking their 'discretionary power' to close liquor shops; prefects invoking it to prohibit the consumption of absinth. The police nearly everywhere suspended freedom of movement on the roads. There was nothing in the law to sanction this. These are details that may arouse the objections of jurists,<sup>8</sup> but they did not disturb public opinion. The mass of the public were much more impressed by the general way the régime worked. In fact, the military authorities coöperated with the civil power rather than directed it.<sup>9</sup> Acting under an authorization from the General, it was the prefects and the mayors, the civil officers, who continued to take the everyday measures of police. The aspect of authority had not changed.

The permanence of the state of siege was, however, repugnant to certain minds. In case of strikes or social troubles, the experience of a civil official was more likely to secure peace than the 'energy' of a general. There was perhaps a lack of tact in making the military authorities bear the responsibility of some act of repression, in setting the army against the people. On the 4th March 1915, M. Paul Meunier, a deputy, demanded the repeal of the law of the 5th August 1914. In his opinion the Government could find in the ordinary law authority for any measure required for the maintenance of order. It had no need to maintain an extraordinary régime, which was in reality merely a political measure. The state of siege, said he, 'is an offensive and defensive weapon against the enemy in our midst, when he exists.' The country's frame of mind does not justify its retention. It was not unnecessary in August 1914; it has become so.

<sup>8</sup> See the interesting remarks by M. Joseph Barthélemy, *Le droit public en temps de guerre*, Vol. I, p. 26. (*Revue de Droit public*, January-March 1915.) But it should be pointed out that the generals, in taking measures of this kind, were able to plead the ministerial instruction of October 1913, which recognized their right to close liquor shops and had laid down the measures they should take to regulate movement on the roads.

<sup>9</sup> The *Instruction* of October 1913 had given directions in this sense (Art. 9): 'In the exercise of its powers, the military authority will endeavor to interfere as little as possible with the normal working of the civil services, so as to avoid on the one hand the inconvenience to itself of taking these over, and on the other the derangements that such interference would occasion. It is only exceptionally therefore that the civil authorities will be dispossessed of their functions.'

But the Government was not disposed to surrender it. 'So long as there must be,' replied M. Viviani, 'between the interior and the front, a constant movement of troops, a whole system of military preparations, of transport of every kind in order to supply the military authorities with what they need, will you tell me how, looking at the matter solely from an outside point of view, I am to set about abolishing the state of siege, without real and serious detriment to national defense?'<sup>10</sup>

On the 1st September 1915, however, the opponents of the state of siege obtained partial satisfaction. The Government, without diminishing in the slightest degree the powers that it possessed, decided to restore to the prefects and mayors in the interior zone all their *normal* police functions. The Generals and the commandants of territorial subdivisions accordingly lost the powers that they derived from the law of the 5th August 1914. But they were not completely set on one side: the Government still continued to have recourse to them for the execution of exceptional police measures, perquisitions, expulsions, etc.<sup>11</sup> 'It has been decided . . . that from the 5th September next the prefects and mayors in national territory outside the army zone shall exercise freely, as in peace time, all the functions conferred on them in police matters and for the maintenance of order. The military authority will exercise henceforward only the exceptional powers which it derives from Art. 9 of the law of 1849 and which the civil authority does not exercise in normal times.'

This new régime was in force during about two years. But during the last period of the war, it was thought necessary to revert in part to the principles of 1914: on the 6th July 1917 a decree suspended the operation of the circular of the 1st September 1915 in certain cantons of the department of the Loire-Inférieure.<sup>12</sup> It was here that the American troops were disembarking; the Government wished to restore the whole of the police powers to the military authorities, with a view to the maintenance of order and the repression of spying. By the same decree it *enlarged* the extraordinary powers of the Gen-

<sup>10</sup> *Annales de la Chambre, Débats*, 1915, Vol. I, pp. 286-287.

<sup>11</sup> Circular of the Minister of the Interior of 1st September 1915, and of the Minister of War of 8th September 1915. (Malvy, *Mon Crime*, p. 221.)

<sup>12</sup> *Journal Officiel*, p. 5895. This decree was issued by M. Malvy.

eral commanding this district. The power of requisitioning armed force was assigned to him,<sup>13</sup> as well as the police control over strangers and liquor shops.<sup>14</sup>

Early in 1918<sup>15</sup> the system applied to the neighborhood of Nantes and Saint-Nazaire was extended by fresh decrees to nearly all the *arrondissements* of the Atlantic coast from Bordeaux to Brest, then to the coast of the Channel, and finally to the coast of the Mediterranean.

At the time of the Armistice, therefore, French territory was divided, in respect of the exercise of the public liberties and of the police powers, into three zones: the army zone had since 1914 been under the authority of the Commander-in-Chief, who exercised all the powers provided by the law of 1879 and the decree of the 10th August 1914; the coastal zone was subject to an 'intensified' state of siege, under which the military authority enjoyed special powers; the interior zone had remained subject, since the 1st October 1915, to a specially favorable régime, under which the civil authority had resumed the exercise of its powers.

## II. *The jurisdiction of courts-martial.*<sup>16</sup>

If the Government counted, at the beginning of the war, on the energy of the military authorities to maintain public order, it was quite natural to have recourse similarly to courts-martial to carry out measures of repression. The court-martial offered the advantages of rapid procedure, of a scale of penalties adapted to the special conditions of a state of war, and of a personnel more concerned with the practical results to be obtained than with the legal principles to be observed. In short, it was a régime that carried with it a reputation for severity.

The reforms introduced in 1906 in the Code of military law were applicable only in peace-time. Thus, by the mere fact that the country was at war, the régime of military tribunals became more severe.

<sup>13</sup> In normal times armed force in aid of the civil power must be requisitioned by the prefect, the mayor, or a magistrate (the *procureur de la République*). [Translator's note.]

<sup>14</sup> But the personnel of the civil police remained under the orders of the civil authority.

<sup>15</sup> 5th January 1918 (*Journ. Off.*, p. 454); 6th April (*id.*, 3057).

<sup>16</sup> See, in this connection, the article by M. J. Barthélemy in the *Revue de Droit public*, April-May 1916.



The rights of the defense were restricted. Counsel was not allowed to be present at the preliminary examination of the accused; he was not entitled to communicate with his client or to consult the papers in the case before the commitment for trial. It was no longer the Court of Cassation that was empowered to review the legality of the sentences, but a special organism, the 'Council of Revision,' in which professional lawyers were not represented. Finally a court-martial was not now entitled to allow the benefit of extenuating circumstances, except in a small number of cases.

At the front the rigor of the system was still further intensified. The preliminary investigation might be dispensed with; the period between the order committing for trial and the assembly of the court might be reduced to twenty-four hours: so that counsel had only twenty-four hours in which to make himself acquainted with the case. Crimes of treason, of spying, of destruction of military works or army supplies, even if committed by civilians, were tried by court-martial.<sup>17</sup>

In spite of the protests that had been raised since the Dreyfus affair against the régime of military tribunals, no one thought of depriving the Government in time of war of a convenient and expeditious instrument.

The declaration, by the decree of the 2nd August 1914 and by the law of the 5th, of a *state of siege* had the effect of assigning a still more important rôle to military courts. Throughout the country, courts-martial, instead of dealing solely with crimes and offenses committed by soldiers or affecting the life and organization of the army, were empowered also to take cognizance of 'any breach of the law threatening the security of the State or public order,' even if the culprit was not a soldier. No doubt this extension of competence was permissive. If the military authority desired to exercise it, it must evoke the case, that is to say, it must signify its intention of dealing with it. But in practice it did not forgo its rights. So that here was the civilian population subjected to the jurisdiction of the military courts for a whole series of crimes. What precisely were these crimes? 'Security of the State' and 'public order' are vague terms, and jurisprudence gives them a very wide extension. According to decisions of the Court of Cassation, every-

<sup>17</sup> Reduced, moreover, from seven judges to five.

thing relating to the state of siege falls within the province of the military tribunals. And so one saw women who were accused of holding alarmist language, persons guilty of assaulting the police, or of theft to the prejudice of the State, brought before courts-martial. In practice, the working of the police courts might be practically suspended if the military authorities exercised to the full their legal rights.

Such was the situation as it resulted from the decisions of the legislature itself at the beginning of August 1914. But the Government deemed these prerogatives inadequate. Of its own authority, it increased the rigor of the repressive system. By decrees of the 10th August and 8th September 1914,<sup>18</sup> it applied to the whole country the rules of *procedure* laid down for courts-martial at the front. This was no unimportant decision. Henceforth, courts-martial at Toulouse or Lyons were entitled to adopt summary procedure. And if it is true that in practice this procedure was not always strictly applied, it was none the less of a nature seriously to impair the safeguards enjoyed by the accused. A person arrested for seditious libel or seditious speech [*délit d'opinion*] might be brought before the court-martial twenty-four hours after being summoned; he was defended by counsel who had scarcely had time to read the papers.

By a further decree of the 17th August 1914, the working of Councils of Revision was suspended as regards sentences passed at the front, so that a sentence became final, even though it might be illegal and invalid.

Finally, the decree of the 6th September 1914 set up at the front special courts-martial, the '*Cours martiales*.' It was General Joffre who had asked for these.<sup>19</sup> At a moment when, after the retreat, the army was to be called upon for a decisive effort, the command required to be armed with the means of immediate repression; 'examples had to be made.' To follow the legal formalities, to summon the accused before the ordinary court-martial, to observe the interval of twenty-four hours, meant a procedure that was still not rapid enough. When a soldier had looted something, had abandoned his post, or intentionally mutilated himself, and when he was caught *flagrante delicto*, the decree of the 6th September empowered the

<sup>18</sup> *Journ. Off.*, 11th August 1914, p. 7325, and 9th September, p. 7875.

<sup>19</sup> By a letter of the 3rd September.

command to bring him before a *cour martiale*, composed of only three judges. Sentence was passed on the spot and was immediately carried out. It was to be feared therefore that the trial might be only a pretence, a mere confirmation, by a show of legality, of a *de facto* power—the commander's right of life and death over his men. As usual, the practice was somewhat different, at once wider and less terrible. The command, in certain armies, adopted the habit of referring the majority of criminal acts to *Cours martiales*;<sup>20</sup> on the other hand these courts did not always proceed summarily: from September 1914 to October 1915 they tried 798 cases; but of these, 281 resulted in acquittals. The number of death sentences was 109.<sup>21</sup> The danger of such a system, however, soon became manifest: in the absence of all safeguards, of all obligatory delay, mistakes are easy. Innocent men were executed by order of *Cours martiales* and the public was not long in learning these lamentable occurrences.

A reaction soon set in. As early as the autumn of 1915, the régime of military tribunals was keenly attacked in the Parliament, both in committee and in public session. While legislation was being prepared, the Government yielded at once, on certain points, to the manifest tendency. Thus the will of the legislature determined the reform as a whole.<sup>22</sup>

The *Cours martiales* were the first point of attack. On a motion by a Socialist deputy, the Chamber requested the Government on the 10th December 1915, to abolish the 'special' courts. General Headquarters disagreed, but the Minister of War, General Galliéni, shared the wishes of the Parliament. The manifest dangers of the system made its retention inadvisable. If the military authorities resisted, the law would compel their submission. It was wiser to take the initiative, and on the 6th April 1916 a circular by General Joffre stopped the working of the *Cours martiales*.

<sup>20</sup> The attention of the armies had to be called, by a circular from General Headquarters of the 16th January 1915, to the fact that the *Cour martiale* was an extraordinary tribunal. Cf. L. Bertrand, *Les Conseils de Guerre aux Armées*, pp. 75 *et seq.*

<sup>21</sup> These are the figures given by M. Flandrin in his report to the Senate, 3rd February 1916, No. 24.

<sup>22</sup> See on this subject the book by M. Paul Meunier, deputy, *Les Conseils de Guerre*, Paris, Ollendorff, 1919; and the article by M. J. Barthélemy quoted above (p. 33).

Moreover, the Ministry and the Parliament agreed in wishing to restrict, throughout the country, the competence of the ordinary courts-martial, and to bring the position of the civil courts into conformity with simple common sense. It was useless, and frequently ridiculous, to submit to military courts offenses that had no direct relation with the police powers exercised by the military authorities, and no bearing on national defense. On the 18th April 1916<sup>23</sup> a circular from the Ministry of War directed General Officers not to oust the police-courts without good cause, and to restrict the jurisdiction of courts-martial to cases that necessarily fell within their province.<sup>24</sup>

A few days later, the proceedings of the Parliament, which had given rise to the preceding measures, resulted in the adoption of the law of the 27th April 1916. After confirming the suppression of the *Cours martiales*, the new law defined the cases in which a *civilian* was amenable to a court-martial: these were, in addition to spying, treason and the destruction of military works or supplies, the crimes and offenses that had a *direct relation* to the reasons for declaring the state of siege. These crimes and offenses were enumerated in the text. This put an end to the encroachments of military on civil jurisdiction. The law moreover empowered all courts-martial, whether at the front or in the interior, to find extenuating circumstances and to grant a reprieve. Lastly, but this only as regards the interior zone, it laid down the rights of the defense, and provided that sentences should be reviewed by Councils of Revision.

From this moment, therefore, the most serious objections to the repressive régime disappeared. The exceptional juridical consequences to which the emergency had given rise were reduced.

The effort in this direction continued, but as the principal results had been attained, it lost vigor. It was suggested that the voting at courts-martial should be secret so as to ensure the independence of the judges. To ask a noncommissioned officer or a subaltern to declare his opinion as to the guilt of the accused when the President of the court-martial, with the prestige of his rank, had already made

<sup>23</sup> There had been an earlier circular in the same sense on the 17th December 1915.

<sup>24</sup> ' . . . Civilians are essentially amenable to the common law tribunals: they can be prosecuted before courts-martial only exceptionally and under the conditions laid down by law.'



known his will, turned the procedure into a farce. It was also suggested that proper arrangements should be made for the defense of the prisoner. At the front it was the *commissaire-rapporteur* who prosecuted and also selected the advocate for the other side! But the Senate let the further proposals of the Chamber stand over: a bill voted by the latter on the 3rd October 1916 had not yet been debated by the Senate eighteen months later. The discussions, however, in committee and in the Chamber, had not been useless: they induced the Government to effect some partial reforms by decree. On the 6th June 1916 the Chamber of Deputies adopted a resolution urging that sentences pronounced at the front, entailing the capital penalty, should be submitted for review to a Council of Revision. Two days later this was accorded by decree. On the 13th February 1917 the Chamber wished to extend this review to *all* sentences of courts-martial, but the Senate refused; it was only after a year that a decree of the 28th February 1918 authorized the Councils of Revision to review sentences to perpetual imprisonment, penal servitude, or deportation. Finally, a law of the 18th October 1918 empowered the Minister of War to suspend the execution of sentences pronounced by courts-martial, even if the sentence had become definitive more than three months previously. In the meantime, in the spring of 1917, the exercise of the right of pardon, which the Government had practically suppressed since the 1st September 1914,<sup>25</sup> had been reintroduced.

Thus it was parliamentary initiative that repeatedly mitigated, by successive amendments, the régime of courts-martial. No doubt the evolution was not continuous. The disturbances in the army in June 1917 obliged the Government to revert for a time to more drastic methods: appeals for revision and petitions for pardon were abolished. To allow the condemned man to postpone the penalty on a point of procedure was, in the circumstances of the moment, to weaken and jeopardize repression. But as soon as the situation had calmed down the safeguards of the accused were reinstated. They were maintained and increased until the end of the war.<sup>26</sup>

It is easy to measure the distance traveled. In September 1914, at

<sup>25</sup> The petition for pardon could go forward only if the officers charged with the execution of the sentence consented to recommend it.

<sup>26</sup> The normal régime was restored by the decree of 24th December 1918.

the front, the soldier guilty of deserting his post was brought before a *Cour martiale*; there was no preliminary investigation, no interval, no appeal. The penalty followed the crime within a few hours. Three years later, the accused appeared before a lawfully convened court-martial; he might have the benefit of extenuating circumstances; he had the right to appeal for revision or to petition for pardon. In September 1914, in the interior, courts-martial were encumbered with trifling cases; they were judging cases of seditious libel [*délits d'opinion*] and press offenses; they were overwhelmed with work. Their sentences, moreover, were not subject to review. Two years later the law had restricted their task; they had reverted to their proper functions—the disposal of cases imperiling the discipline of the army or the defense of the country; and their decisions were subject to legal revision, carried out in great part by mobilized magistrates. It was shown here, even better than in the organization of the police, that a ‘military’ régime, provided for the contingency of a violent crisis, but one of short duration, had to give place, with the prolongation of the war, to a system more in conformity with the customs of the country. The conduct of the population permitted of this evolution, and rendered it inevitable.

### *III. Freedom of opinion: the censorship.*

Punishment and the maintenance of order, if unsupported, avail little, and an appearance of calm is of small consequence, if at heart the country falters; for a wave of discouragement might quickly sweep those barriers aside. Even if they held for a time, the evil would be none the less serious. If once confidence failed, energy would crumble away. The Government knew this; it had to tend the morale of the country as well as that of the army. The press could and ought to be the instrument for this purpose.

The control of the Government over the press was established from the outbreak of war; but this emergency régime was organized under very special conditions.<sup>27</sup> It was generally agreed that the fact of war must entail suppression of the liberty of the press, as defined by the law of 1881. The conduct of operations and of diplo-

<sup>27</sup> In order to lighten this work, which I desire to confine to essential principles, I leave out of account here questions of secondary importance, such as the liberty of the theater.

matic negotiations required secrecy; it would be intolerable to leave their success at the mercy of some indiscretion. In 1870 the enemy had derived valuable information from the newspapers. Moreover, public opinion needed guidance and support, if nervousness and over-excitement were to be avoided. The Government could, no doubt, count on the good will of everyone and appeal to the patriotism and devotion of journalists. It did not fail to do so. But these were insufficient guarantees. The press was ready enough to discipline itself; none the less an external discipline was necessary, if only to prevent blunders or individual shortcomings.

The pre-war legislation was quite summary. The law on the state of siege empowered the military authorities to prohibit publications of all kinds calculated to provoke disorder.<sup>28</sup> A sorry method! The police were to intervene when the mischief was done. The terms of the article lent themselves to arbitrary action, and also to weakness. The publication of an item of news—correct but inopportune—regarding a military project or a negotiation, did not fall directly within the purview of the law.

Accordingly, among the urgent measures of which the Government secured the vote at the sitting of the 4th August 1914 was a law to 'prevent press indiscretions in war-time.' This was an emergency measure, which was to cease to be operative, at the latest, on the conclusion of peace; the Government might suspend it earlier by simple decree. The law prohibited, under penalty of fine and prison, the publication of any information regarding military operations that had not been communicated by the Government and the military authorities, or of any appreciation of military or diplomatic events calculated to assist the enemy or to exercise an unfavorable influence on the spirit of the army or the country. In virtue of the state of siege, offenses were triable by court-martial.

In all this there was no question of requiring newspapers and other kinds of published matter to be previously authorized. The law provided for a repressive, not for a preventive régime. In theory, therefore, the press was obliged either to refrain from any commentary on events, and confine itself to reproducing the *communiqués*, or to risk the penalties of the law if its commentaries should appear to endanger the morale of its readers.

<sup>28</sup> Art. 9 of the law of 1849, §4.

But, in practice, from the very first days of the war, without any legal enactment, without the least decree, it was a system of preventive *censorship* that was set up. On the evening of the 4th August—the laws relating to the state of siege and to press indiscretions having been voted but not yet promulgated—the Government issued a communication to the newspapers. After recalling that it had the power of prohibiting any publication and of punishing its authors, it expressed the hope that it would not be obliged to resort to drastic methods. ‘The Government counts on the patriotic good will of the press of all shades of opinion, in Paris and in the provinces, not to publish a single item of information regarding the war, whatever its source, its origin, or its nature, without its being previously visé by the Press Bureau, which has been established since yesterday at the Ministry of War.’<sup>20</sup>

This was an ‘invitation’ that it was impossible to evade, since the mere fact of doing so might involve a prohibition by the military authorities. The principle of the censorship was established. ‘In fact,’ wrote M. Alfred Capus a little later, ‘the dialogue between the censorship and the press might be resolved into these few questions and answers’:

‘I should be much obliged, Sir, if you would suppress these few lines in your article; I ask it as a personal favour.

‘And if I don’t?

‘If you don’t, I shall be under the necessity, though it cuts me to the heart, of suspending the publication of your paper.’

In reality, the Government’s communication was not a purely arbitrary act. The press itself might find it of advantage: for it was better to ask for previous authority than to run the risk of a penalty.

<sup>20</sup> The Paris Press Bureau was attached in the first instance, and until the end of 1914, to the Military Governor’s office; and then until the beginning of 1916, to the office of the Minister of War. An *arrêté* of the 3rd January 1916 set up a ‘General Directorate of relations with the Press,’ which was entrusted to M. Gautier, Councillor of State, then to M. Maruéjols, Minister Plenipotentiary; the censorship formed one of the sections of this service, still attached to the Ministry of War. Finally, on the 22nd September 1917, the ‘General Directorate’ was abolished, and the censorship service resumed the title of Press Bureau. It comprised, at this time, eight sections (general office, censorship of dailies, censorship of periodicals, control of provincial commissions, diplomatic censorship, financial censorship, control of press telegrams, executive service).



How could a newspaper judge whether a particular article was calculated to affect public opinion prejudicially? By asking the Bureau, it was safeguarded. 'It is we who took the initiative,' said M. Jules Roche, journalist and deputy, a few months later in the Chamber.<sup>30</sup> And M. Maurras was able to state that the whole press, 'on the initiative of the *Action Française*,' had spontaneously declared itself ready to publish only news that had been communicated or authorized by the Government.<sup>31</sup> Indeed, when the Minister of War had asked the newspaper editors to accept 'with good grace' the position in which they were to be placed, he had had no great difficulty in persuading them. It was in this sense that it might be said that the censorship was based on an 'amicable agreement'<sup>32</sup> between those concerned and the Government, and that it constituted a sort of semiofficial control. To mark this coöperation, the Minister of War, by an *arrêté* of the 12th August, set up a 'Press Commission,' which was to submit to him the wishes and the complaints of journalists.

In reality this 'amicable arrangement' assumed quite a different aspect. It was not long before the Censorship considered itself entrusted with a police mandate, and previous submission to examination very soon became in practice obligatory. Newspapers regularly submitted their proofs to be viséd; when a passage gave rise to observations by the censorship, they simply deleted it, leaving part of their columns blank. The Press Bureau no longer appealed to the journalists' good will, it gave its orders; and those orders were anonymous—a simple telephone call. If the newspaper did not comply, court-martial proceedings, save in exceptional cases, could not be instituted, since there was no provision in the law requiring the visé.<sup>33</sup> But the Government had all sorts of subsidiary penalties at its disposal: it might stop the sale of copies of the paper, and prohibit its issue, in virtue of the state of siege. There thus existed, in practice, a scale of sanctions, of which constant use was made. The paper

<sup>30</sup> Sitting of 4th March 1915, *Annales de la Chambre, Débats*, p. 290.

<sup>31</sup> *Action Française*, 10th July 1915.

<sup>32</sup> A. Capus, *La presse et la Guerre, Revue Hebdomadaire*, 13th March 1915, p. 114.

<sup>33</sup> Yet a paper that published news 'relating to current operations' was liable to penalty, even if the censorship had viséd it.

that had disobeyed the Censorship's orders received a 'warning'; if the matter was more serious or if there was a repetition of the offense, the paper was 'suspended' for a varying period; and lastly there was 'suppression.'<sup>84</sup> All this came thick and fast, without vain formalities or any further safeguard! Here were methods which had nothing in common with the 'coöperation' announced in the note of the 4th August 1914. A state of war has little use for benevolent powers and friendly advice; action must be prompt and decisive.

The weapon was a practical one and its effect speedy. Although the régime of the censorship was only to apply, in theory, to military or diplomatic news, the Government might extend its sphere of action. After all, was not the object in view 'to maintain the country in favorable frame of mind'? It was not only false news, injudicious information, and criticisms of the command, that were calculated to shake public confidence and diminish the authority of the executive. Such arguments would naturally appeal to any Government, anxious for its own tranquillity. It was decided to supervise the press in the general interest, and not without some advantage to the Government itself. A 'political censorship' was accordingly added to the military and diplomatic censorship.

This supervision of the press, from the standpoint of internal politics, was in the first instance carried out by the prefects; it was organized by a circular of the 22nd September 1914. At this moment, therefore, the political censorship was distinct from the military censorship. But the dual service was abolished in February 1915: the prefect surrendered the functions that the circular of the 22nd September 1914 had laid upon him and confined himself to naming a representative, a civilian, to sit on the military censorship committee.

This reform had the advantage of disguising to some extent the character of the control; it enabled the Government to declare at once that there was no 'political censorship,' a term that sounded ill. 'Political censorship?' exclaimed the President of the Council, 'What do you mean by political censorship? There is a *civil* censorship which may be brought to bear on certain publications calculated to give rise to disorder; but, in the proper sense of the term, there is no

<sup>84</sup> The authority of the Minister was required when it was proposed to suspend or suppress a newspaper.

political censorship.<sup>35</sup> It was a question of the meaning of words. The reform of February 1915 had made no change in essentials. A comparison of the statements made by two other members of the Government at an interval of a few months is enough to show this. 'The censors,' M. Millerand had said on the 28th October 1914, 'exercise only limited powers in political matters; they must not interfere with articles unless these attack members of the Government in such a way as to discredit them in the opinion of the public and to deprive them of the authority they require for the discharge of their duties.' And here is M. Malvy's point of view, in April 1915: 'there exists only,' said he, 'a military censorship,' but it is true that it is applied 'not exclusively to military and diplomatic questions, but also to articles containing violent attacks on the Parliament and the Government, and to those calculated to disturb public opinion from the standpoint of national defense.'<sup>36</sup>

Even if one confined oneself to these official statements, the rôle of the censorship would be extensive and remarkable. The Government escaped the control of public opinion, stifled criticism, and shaped the mind of the nation. But in doing so, it undertook a grave responsibility. By spreading optimism, it might in the long run weaken the public sense of the difficulties still to be overcome. By an economy of official truth, it ran the risk of creating a kind of apathy in the country. It was a question of degree, it will be said. But the Government of France appears to have gone very far in its anxiety to spare the nation from too vivid flashes of the truth. There were, moreover, certain other practical objections to this procedure. Since it rested with the Press Bureau to authorize or prohibit, it appeared to set its seal to the articles which it passed. No doubt the conclusion was unwarranted. None the less a statement passed by the censorship frequently acquired, for the bulk of the public, the stamp of authenticity.

This régime—of which I have up to now merely sketched the leading features<sup>37</sup>—was made the object of increasing criticism

<sup>35</sup> M. Viviani, *Annales de la Chambre des Députés, Débats*, sitting of 4th March 1915, p. 290.

<sup>36</sup> The *Temps*, 15th April 1915. The Minister's reply to a written question by M. d'Aubigny, deputy.

<sup>37</sup> See also P. Barthélemy, *Le droit public et la guerre. III. La censure. (Revue de Droit public)*, loc. cit.

throughout the war. The Government had laid down the procedure of the censorship, and claimed to have determined the rôle assigned to it. And in doing so, it had not refrained from going beyond the principles that it had originally professed. The public, it was thought, would perhaps put up with it. But now, as applied day by day, the action of the Press Bureau was seen to be arbitrary, harassing, and at times inconsistent. Thereupon the opponents of the censorship opened a vigorous campaign; this was soon being waged in the Parliament, in public session as well as in committee; the attack was obstinate but unsuccessful. The frequency of the debates, the abundance of proceedings of all kinds to which it gave rise, make this one of the most troublesome questions in the history of the war government and administration of France.<sup>38</sup>

It was raised, as early as September 1914, by the articles of M. Alfred Capus and M. Clémenceau, and it caused M. Chaumet, deputy, to approach the President of the Council in November. What were the complaints against the censorship? In the first place its blunders and mistakes. One day it suppresses an article because it might alarm the public, but lets the heading remain: 'Bombardment of Pont-à-Mousson'; it forbids an attack on those who attempt to evade military service but allows the words '*Carnet des embusqués*' (List of skulkers) to appear. Another day, it requires the suppression of a word, of a phrase, without perceptible reason. One would think at times that it acts from mere love of bullying. These mistakes may be due to the conditions under which the censorship is carried on. The censor is obliged to work quickly, during part of the night; blunders are not surprising. And then he is an official; his chief has received certain instructions which he has been ordered to apply. In an awkward case, or even where there is a doubt, it is always simpler to suppress the passage than to run the risk of a reproof. This alone is sufficient to account for the fact that the censorship of the morning papers, which operates during the night, is even more severe than that of the evening papers.<sup>39</sup>

But the censorship was also criticized for its inconsistency: its decisions, it was said, which are always arbitrary, are often contra-

<sup>38</sup> The time has not yet come to write the story. It will not be possible to do so until the archives of the Censorship have been thrown open.

<sup>39</sup> Latzarus, *Les journaux pendant la guerre* (*Revue de Paris*, 15th April 1915, p. 775).



dictory. The previous examination of press matter was carried out in Paris by the Press Bureau, in the provinces by special commissions. As between one part of the country and another, though the instructions might be uniform, their application varied. The Government readily admitted this; the fact that an article had been inserted in one paper was no reason, it said, why other papers should consider themselves entitled to reproduce it.<sup>40</sup> Each local commission retained its right of appreciation. And one might read in the *Dépêche de Brest* or in the *Progrès de Lyon* items of news that had been prohibited in the *Matin*. Of course excuses were plentiful. In different regions, it was pointed out, the mind of the public is impressionable in different ways. But a glance at particular decisions was sufficient to show that a large number of them could not be thus accounted for. And then these contradictions were habitual. The same commission would forbid one newspaper to publish a piece of news and allow it to appear in another. The Paris press complained continually of this practice, without succeeding in getting it completely stopped.

These criticisms were directed mainly against the Censorship officials; there were others of greater importance and wider scope, directed against the Government. It was the latter that issued instructions, of principle and of detail, to the Censorship. The head of the Bureau recorded them, with their origin and date of receipt. Nothing whatever was to be passed on such a subject; this piece of news must not be published because it was false, nor that, because it was true. There were instructions concerning particular individuals: certain names were not to be mentioned. There were others condemning certain tendencies.<sup>41</sup> Among these instructions a large number were perfectly justified. The Government could not allow any allusion to the possibility of a separate peace; it was quite right in prohibiting any discussion on the 'aims of the war' or the conditions of the future treaty.<sup>42</sup> But how could it escape the temptation of

<sup>40</sup> Reply of M. Malvy to a written question by M. d'Aubigny, the *Temps*, 9th April 1915.

<sup>41</sup> When this register of instructions becomes available, history will find valuable materials in it, because it will show how the Government shaped public opinion, and it will allow just those facts to be ascertained which the press was not allowed to talk about.

<sup>42</sup> Statement of M. Viviani in the Chamber, September 1915. *Annales*, Dé-

abusing its power? We see it availing itself of the Censorship to protect Ministers and deputies against *personal* attacks; suppressing, in the autumn of 1914, certain articles in favor of the summoning of the Chambers; and even forbidding criticisms on the administration of the army, the medical service, or the public departments. This was unquestionably political censorship, whatever the President of the Council might say.<sup>43</sup> And how could it be defended? The check exercised by public opinion, as experience showed, was salutary. How many measures favorable to the soldier would have been neglected or stifled, but for the press! The Government took decisions; it did not know the impediments placed by its own agents in the way of the application of its own circulars and decrees. The press did its duty in drawing attention to them, but received no thanks from the Government for its interference.<sup>44</sup>

Parliamentary circles laid hold of these criticisms and made them their own. Was not the liberty of the press a condition of the parliamentary system? 'Our assemblies,' said the *Rapporteur* of one of the committees, 'are not sufficiently free, that is to say sufficiently enlightened, if the press alongside of them is not free, if freedom of external opinion does not lend its light to the freedom of our discussions.'<sup>45</sup> M. Clémenceau, journalist and senator, distributed by post to his colleagues the articles which the Censorship had forbidden him to publish. The Press Syndicate issued a protest against the severity of the Press Bureau. As soon as parliamentary sittings were resumed, the question was raised, and the Committee of the Chamber of Deputies on civil and criminal legislation was seized. From that time forward the Government was called upon periodically to repel the same attacks, but was never embarrassed by them.

On the 22nd September 1915, M. A. Capus, in virtue of his *per-bats*, p. 1133. 'I assembled, five months ago, representatives of the great Paris newspapers. I told them that I wished them not to speak of the conditions of peace, as they might thereby create a very inconvenient state of public opinion.'

<sup>43</sup> It must be admitted that the Censorship did not protect itself, and frequently allowed criticisms on its own proceedings.

<sup>44</sup> It is true that in some instances the Government decided, after a certain lapse of time, to have the text of the censored article communicated to the public department concerned, so that it should consider the criticisms.

<sup>45</sup> *Rapport* of M. Meunier, 30th October 1915, No. 1899.

sonal position in the Paris press, was invited to give his opinion before the Committee on civil and criminal legislation. He accepted in general the *de facto* régime that the Government had gradually set up. The military and diplomatic Censorships were, in his opinion, legitimate; the sanctions in use (warning, seizure, etc.) seemed to him tolerable. But he attacked the political Censorship: there was nothing in the law of the 5th August 1914 that justified the Government in maintaining it. This was very much the conclusion that the *Rapporteur* of the Committee proposed to adopt.<sup>46</sup> ' . . . The text of every article or item of news of a *military* or *diplomatic* character should be communicated before publication . . . to the authorities, who should visé it within two hours.' The previous examination of proof-sheets would thus become legal, but limited in its scope.

This was not the intention of the Government. The Censorship, said the President of the Council, must be in a position to object to certain press campaigns calculated to destroy the harmony of the country. Besides, why did the press complain? It was the press itself that preferred a preventive to a repressive régime.

The discussions that took place, in the Parliament and in the press, ended by convincing the opponents of the Government that their efforts were useless. 'We abandon,' thereupon said the *Rapporteur* on behalf of the Committee, 'our attempt to legalize the Censorship, while restricting it within legal, equitable and national limits. No formula can be found that will satisfy everyone . . . it is therefore better to refuse to give any legal authority to the Censorship in its present form.'

The critics then took up other ground. Should not the 'absolute power' exercised by the Press Bureau be limited? It might be authorized to seize copies of newspapers, but not to suspend or prohibit publication. But the Government would not listen to these suggestions and adhered to its opinion.

It even strengthened the system in points of detail, in the course of 1916. It prohibited the editor of a newspaper that had been suspended from publishing another, under a different name; it put a stop to the practice that prominent journalists had adopted of

<sup>46</sup> He did not however admit seizure by administrative methods, and demanded a judicial decision. Cf. *Rapport* of the 30th October 1915, No. 1399. The evidence of M. Capus is given as an appendix to this report.

sending by post to members of the Parliament the articles which the Censorship had suppressed. The law of the 27th April 1916, which restricted the competence of courts-martial, placed press offenses once more within the civil jurisdiction; but they were to be dealt with by the police court, and not the assize court.<sup>47</sup>

In vain did the Chamber endeavor, when M. Briand was obliged to remodel his Ministry (12th December 1916), to get the political Censorship abolished.<sup>48</sup> The vote on the question of principle remained without effect. The President of the Council replied, when interpellated, that it was impossible to draw an exact line of distinction between news of a 'diplomatic' character and articles of a 'political' character. Could the Government tolerate a campaign on the subject of the prolongation of hostilities? If it did, the Chamber would be the first to blame it. In war time, certain subjects must not be discussed, and it rests with the Government alone to exercise this control. M. Briand had no difficulty in convincing the majority of the Parliament.

The Cabinet of M. Ribot (20th March-12th September 1917) maintained the instructions given by its predecessors. In its declaration of policy to the Chambers,<sup>49</sup> it announced its intention of making 'a firm use of the power conferred on it by law' of suppressing false or tendentious news calculated to mislead, of stopping press campaigns manifestly designed to discredit republican institutions or tending to 'dissipate the strength of national defense.' The Censorship would be instructed to have an eye especially to attacks on the Parliament and on pacifist propaganda. No doubt 'freedom of discussion' would be allowed. It would prefer 'even unjust criticism to a feeble and enervating optimism.' None the less the Government, when in turn it found itself in political difficulties, did not hesitate any more than its predecessors to use its powers in order to prolong its own existence.

Nor did M. Painlevé proceed otherwise. It is true that he had the encouragement of the Chamber, which invited him to 'put a stop to the campaign of calumny against the Republic.'

<sup>47</sup> By the law of 1881 the assize court was competent; but the offenses dealt with by the law of 5th August 1914 fell outside the ordinary rules.

<sup>48</sup> Amendments by Ch. Bernard and E. Brousse, 14th December 1916, *Annales, Chambre, Débats*, p. 3671.

<sup>49</sup> 21st March 1917, pp. 779-780.



But now a fresh resistance developed: 'We cannot allow the Government any longer,' said an interpellator,<sup>50</sup> 'to permit the Censorship to work as it now does, that is to say in the most illegal, the most unequal, and the most arbitrary manner conceivable.' The Professional Association of the Republican Press also observed, in a protest of the 4th November 1917, that the Censorship was intervening to an increasing extent 'in the domain of pure politics,' and that it was preventing the newspapers from criticizing the 'grave errors' of the executive.

A fortnight later M. Clémenceau was in power (16th November 1917). He had been the most tenacious and redoubtable opponent of the Press Bureau. The public accordingly awaited the statement of his intentions with some curiosity: 'A censorship will be maintained on diplomatic and military intelligence, and also on such information as is liable to disturb the public peace, but opinions will be respected,' he told the Chamber on the 20th November. 'The Censorship will give advice, and only advice, to whoever asks for it. In war as in peace the writer is free, subject to his personal responsibility. If we depart from this rule, we get only arbitrary decisions and confusion.' The President of the Council seized the first opportunity to show that he did not intend to use the Press Bureau as a protection from personal attacks.<sup>51</sup> 'The right of insulting members of the Government,' he declared ironically, 'must be made inviolable.'

In fact, the orders issued to the Press Bureau were that it should carry out military instructions as usual, that it should scrutinize very carefully all 'pacifist' articles, but also that it should be 'very indulgent' as regards political articles and news, so long as these did not relate to strike movements, to matters of high treason, nor to financial operations. The tone in fact had changed, and even the opponents of the Government had to admit it.

But when the armistice had been signed, the administration was confronted with fresh criticisms. Why maintain a rigorous censorship on news and questions of a diplomatic character? The Press Bureau was no longer 'a means of protecting the country against dangerous indiscretions'; it was merely 'an instrument of govern-

<sup>50</sup> M. Peyroux, 26th October 1917.

<sup>51</sup> On the subject of an article published in the socialist paper of the Yonne. Note to the Press of the 8th January 1918.

ment.<sup>52</sup> In spite of these protests the Censorship was carried on throughout the peace negotiations, and was still in force after the signature of the treaty. When the Chambers were discussing its clauses on the 22nd July 1919, the Government had no difficulty in obtaining the adjournment *sine die* of an interpellation on the subject.<sup>53</sup> It was only on the 12th October 1919, when the state of siege was abolished, that the press law of the 5th August 1914 was definitely repealed.

From the 2nd August 1914 to the 12th October 1919, France lived under a régime of political state of siege. It was in virtue of the laws of 1849 and 1878 that in times of crisis the police powers were strengthened, the competence of military tribunals extended, and the liberty of the press restricted. The Government had put these legal provisions into force from the first day of mobilization. The Chambers had at once confirmed the exceptional powers of the executive, and had completed them by passing the law relating to press indiscretions. The legal position as regards the public liberties in time of war was thus determined, although in reality one of the essential features of this régime, the Censorship, had never been provided for by law. In practice this position was repeatedly modified.

During the first period of the war, the Government, of its own authority, set up a régime of greater severity than the pre-war legislation had intended or contemplated; it was the Government that enlarged the scope of military jurisdiction and created the *Cours martiales*. From the autumn of 1915, the application of the régime was relaxed. Not only did the executive abandon some of the measures that it had taken on its own responsibility, but it consented to waive some of the consequences of the state of siege: judicial and police functions, in the interior zone, were restored to those to whom they normally belong. During the last period of the war, however, there was a reversion, in certain measures of detail, to more rigorous principles, but only to the extent rendered necessary by local conditions.

The Government accordingly tended, in the course of this evolution, to reduce the share of the military authority in the adminis-

<sup>52</sup> Alexandre Blanc, *Annales, Chambre, Débats*, p. 3252.

<sup>53</sup> Interpellation by M. Lafont, 24th April 1919, *ibid.*, p. 1953.

tration of the country; it had recourse by preference to the civil authority. It was the respective functions of the General and the Prefect, of the courts-martial and the ordinary tribunal, that were at issue: but, taking them as a whole, the executive did not surrender the exceptional powers conferred on it by law.

## CHAPTER III

### THE GOVERNMENT AND THE PUBLIC SERVICES

THE war was to be a short one. It was understood that mobilization, by summoning every able-bodied man to the colors, would suspend the country's economic life. While the crisis was being solved at the front, the only duty of those behind the lines was to wait, with composure. The army would subsist on its own reserves of stores and munitions.

But the war dragged on. All forecasts were upset and the end of the crisis lay in a dim and indefinite future. The army called on those in the rear to supply it with arms, and to equip it for the new forms of warfare. The country required all its strength, all its resources, to sustain the struggle. The Government distributed the parts, and organized an industrial mobilization.

This was not enough, for there was now solidarity between the army and those behind it. The Government could not afford to neglect the element of strength supplied by the patience and the zeal of the civilian population. It had to watch over it and maintain it. It had to enable the inhabitants to obtain food and clothing on reasonable terms, for these could not be secured by private initiative in time of emergency. The State therefore intervened; it was constantly undertaking new functions; it finally took charge of the whole national economy.

This invasion of State control was not premeditated. There was not, at any rate in France, any attempt, when once the certainty of a long war was established, to lay down systematically the program of the State's progressive intervention. The steps taken were taken under the pressure of circumstances, from hand to mouth, as the need arose. But this empirical development was continuous, from 1915 to 1918.<sup>1</sup>

When mobilization occurred, the Government found in the existing legislation the means of assuming the direction of railway transport and of taking from private persons the horses and motor-cars

<sup>1</sup> See the chapters on these questions in Trustee, *Le Bilan de la Guerre*, Paris, Plon, 1921; and in Delemer, *Le Bilan de l'Etatisme*, Paris, Payot, 1922, which have directly inspired this preamble.



required by the troops. It had, moreover, the right of requisitioning commodities, produce, and arms for the needs of the army. But there was no general plan ready for immediate application. The military personnel was invested with authority to carry out the indispensable measures. But the Commissariat department could not be counted on for an operation of vast dimensions. It lacked the required competence: it was one thing to lay hands on existing resources; it was quite another thing to create new resources and distribute them. When once the army began to demand large quantities of munitions and arms, it was inevitable that recourse should be had to more supple administrative methods, and that private enterprise should be associated with the efforts of the public services. It was soon the whole economic life of the country that had to be directed; and the needs of the army became only one among the problems that the executive had to deal with. Indeed, the war régime, on its economic side, was not long in assuming a development very different from what had been foreseen.

‘On the eve of the armistice,’ says M. Delemer, ‘the State had reached the point of absorbing for the needs of the war nearly the whole of the available material resources. Requisition, within the country, appropriated French production, so far as it survived. The system of importation, which was centralized in the hands of a few organisms, no longer allowed anything to filter through that was not for the public service.’

By the operation of successive measures, private enterprise disappeared under the encroachments of State control; it was regulated, disciplined, and stifled. The economic régime fell foul of ‘individual liberty’ in practically all its manifestations.<sup>2</sup>

Freedom of commerce no longer existed. The State fixed prices, distributed supplies, requisitioned produce. In the few spheres in which exchange remained theoretically free, the monopoly of transport intervened. To despatch goods by rail, priority had to be obtained for them, and this priority it remained with the State to determine. The execution of contracts was thwarted by the moratorium. Purchases abroad were limited by the system of prohibitions.

The freedom of production was restricted. Raw materials, thanks to the monopoly of imports, were in the hands of the State; it was the

<sup>2</sup> Cf. Trustee, *op. cit.*, p. 31.

State that granted labor, recalling workmen from the front and provisionally exempting them from military service, hiring out prisoners of war, and organizing the immigration of colonial natives and of foreign workmen; it was the State that controlled the type of manufacture in all the industries working for the war. Consequently even where it did not directly requisition the factories, it was in a position to impose an 'equivalent régime' on most of the industries. Agriculture did not lend itself as readily to this régime. Nevertheless, a law of the 6th October 1916 provided for bringing abandoned land under cultivation. If an owner or farmer was unable to till his land, or neglected to do so, the mayor might take steps to have it requisitioned. At first the land was to be put into cultivation by an agricultural committee in the department; subsequently, under a second system, by the central administration itself; and finally by an agricultural coöperative society.<sup>3</sup>

The liberty of labor was limited in all sorts of ways. To prevent strikes, the Government might threaten to send back to the front such workmen as were mobilized soldiers. To settle the conditions of labor, it might threaten rebellious employers with the militarization of their works. The 'civil mobilization,' however, of which there was talk on several occasions, was not carried into effect.

In addition to these direct or indirect attacks on the general liberties, the executive did not hesitate to repudiate formal contracts on its own authority, invoking for the purpose the public interests. By a simple decree, the Minister of War modified the status of men who had enlisted voluntarily, in spite of the promises made to them at the moment of their engagement. 'As regards contracts,' said the Minister, 'I know of only one at this moment: the contract that binds us all for the safety of the country.'<sup>4</sup>

This is not the place to attempt a survey of the war legislation, or an appreciation of the practical value and the financial consequences of these measures. The 'balance-sheet of State control' can, to some extent, be drawn up; we may demonstrate the inability of the State to carry out its ever-widening functions under healthy and reasonable conditions; we may endeavor to estimate the wastage and mis-

<sup>3</sup> *Chambre, Rapports*, Nos. 1783 and 4482.

<sup>4</sup> Quoted by M. Barthélemy, *Revue politique et parlementaire*, 10th April 1917, p. 20.

calculations.<sup>5</sup> It is easy to see the inconsistencies of an improvised legislation, to observe the gap that separates the measure as decided on from the measure as applied. These were the failings of 'Government enterprise.' In order to avoid them, should the Government have refrained from thus constantly interfering with individual activity? The very adversaries of State control admit that, in the interests of the country's existence, this interference was inevitable. 'Freedom of commerce,' says one of them, 'if it is to be exercised to the advantage of the community, presupposes the existence of varied and considerable stocks, the regularity and security of sea and land communications, an abundance of internal and international credit. During the war, none of these vital factors was present or could be present.' Private enterprise was unable to secure, by its own means, the raw materials obtained from abroad. It frequently itself solicited the assistance of the State, because it felt itself incapable of overcoming this difficulty. Moreover, the exporting countries, England and the United States, were asking the French Government to set up a single purchasing body for each category of goods. The mercantile marine was inadequate for the transport of the essential commodities: the Government was therefore bound to step in to prevent tonnage from being appropriated to meet requirements of secondary importance. And finally, if private transactions had been left uncontrolled, the rise in the exchanges would have been accentuated and the country's power of resistance would have been impaired. All this system of prohibitions on imports and exports, of monopolies, of consortiums, was the outcome of urgent and undoubted needs which the Government had no right to disregard. Nor would anyone maintain that the struggle against the rise of prices at home was altogether vain, or that rationing was useless. And if State interference in the conditions of employment accelerated the rise of wages, did not this liberality increase the productivity of labor? State control was a necessary consequence of the exceptional circumstances. At a time when the normal economic relations between countries were interrupted, and each was endeavoring to reserve all its resources for itself, the State alone could obtain some concession from another State. And when, at home, there was a shortage of commodities, it was the State's duty to react against the rapacious tendencies of individual interest. 'The

<sup>5</sup> This is what M. Delemer has attempted to do in the work which has already been quoted above more than once.

details of the measures adopted are open to discussion,' says an author who shows no tenderness for State control; 'but as a whole they were the outcome of a conception that was sound and, up to a certain point, inspired by genius.'<sup>6</sup>

The immense work undertaken by the State affected the conditions of administration and of government. The object of this work is solely to show how the executive was led to develop its powers and to modify the organization and grouping of its services in such a way as to adapt them to the necessities of the state of war.

### *I. The enlargement of the public services.*

The continuous extension of the functions of the State entailed the frequent creation, between 1914 and 1918, of new services, which were fitted, as well as they could be, some of them into existing departments, others into new departments, themselves the outcome of the war. The number of officials increased correspondingly. Without pretending to enumerate here, even summarily, the most important of these services,<sup>7</sup> we must glance at the general conditions under which they were developed, in order to understand, with the help of a few examples, the difficulties encountered in the necessary work of coördinating them.

1. The administration, in order to cope with its task, was obliged to set up new organisms, which were called upon to study the problems raised by the war, to prepare the ground for decisions, and to take the executive steps contemplated by the decrees or ministerial *arrêtés*.

It was natural to have recourse, in the first instance, to the organization of special services in each of the ministries concerned; the personnel of the central departments, which had been reduced at the moment of mobilization, was accordingly reconstituted; it was then increased, by recourse to temporary assistance and to mobilized men. As the work developed, new 'bureaus' and new 'directorates' had inevitably to be created in the departments charged with the defense of the country and the management of its economic life.

<sup>6</sup> Delemer, *op. cit.*, p. 184.

<sup>7</sup> This is the object of the work by M. du Rétail, to which the present discussion is merely a preface.



The Government was, however, unable, in theory, to create these new posts of its own authority. Since the Finance Law of the 13th April 1900, it was understood that the number of heads of services of each grade might be increased only in virtue of legislation. In view of the urgency, the executive did not hold itself bound to comply exactly with this requirement.<sup>8</sup> But it could not entirely evade the control of the Parliament, since it had to obtain the vote of the necessary credits. In spite of this restriction, which was not a source of serious inconvenience, it was therefore practically free to remodel the services of the central administrations.

Decisions were taken piecemeal, by way of successive adjustments, as a result of genuine needs or of good intentions; but they had the disadvantage of disturbing the routine of the services. At the end of 1915, the *Rapporteur Général* of the Budget Committee of the Senate condemned 'the hasty and unmethodical alterations introduced into the services of the central administration. No attempt appears to have been made during the last three years to abandon this empirical procedure.'<sup>9</sup> It was only in the spring of 1918 that the Government, after a general inquiry, undertook the reorganization of some of the central departments, for instance, the Ministries of Commerce, of Agriculture, of Labor, and of Foreign Affairs.<sup>10</sup>

The provisional establishments of the central departments, as they stood on the morrow of the armistice, illustrate the great development of the services. At the Ministry of Commerce, for instance, alongside of the three directorates that deal with normal business (commercial legislation, technical instruction, and customs and commercial conventions), the group of war services (interallied and national) had taken a predominant place. The technical services, for example, were subdivided into ten sections dealing with various raw materials and manufactures: textiles, oils and fats, hides and skins, chemicals, etc. At the Ministry of Public Works the civil departments were duplicated by military departments, which, like the former, dealt with waterways, railways and harbors, in respect of

<sup>8</sup> It set up, for instance, by simple decree, a directorate of submarine warfare (18th June 1917) and a subdirectorate of siege artillery.

<sup>9</sup> A scheme of reorganization of the Ministry of War, drawn up by General Galliéni in 1916, came to nothing.

<sup>10</sup> Decrees of 14th February, 18th February, 19th February, 14th June 1918.

army requirements. At the Ministry of War there had been a large development of the functions of the directorates and of their personnel. It should be observed also that completely new organizations had been added to the original establishment, for instance the 'General Service of pensions and information to relatives' (which as early as 1915 comprised 700 employees), the Prisoners of War Service, and the Demobilization Service.

But the executive had other resources as well, and made even greater use of these. It was in the habit of creating Commissions, Committees, and Offices alongside of the central departments. All these were composed, as a rule, of officials, aided by representatives of the particular branch of economic activity concerned, traders, manufacturers, or agriculturists, in varying proportions. They were intended therefore to assist the services in their investigations and decisions by associating with them the competence and initiative of men who, by reason of their position and experience, were capable of offering practical suggestions and bolder ideas. These organisms played an important and interesting part in war administration. It is not easy, however, to define their characteristics, for the form and functions of each depended on the decree or ministerial *arrêté* that set it up.

The *Office*, in theory, possessed resources, consisting generally in a State subsidy. The decree that organized it defined its scope, and the personnel of its secretariate. It was directed by an administrative council. The National Office for Foreign Trade, for instance, was created on these lines before the war, and the Government during the war developed other similar bodies. Thus in December 1917 there were formed an office of *Agricultural Reconstruction* comprising sixteen members (eight officials appointed by the Ministries concerned, and eight agriculturists), and empowered<sup>11</sup> to make advances to agriculturists for the purchase of plants, cattle, and fertilizers; and a central office for *Agricultural Chemicals*,<sup>12</sup> whose duty it was to procure, by purchase or requisition, machinery and fertilizers, with a view to handing these over to farmers: its expenditure and receipts were carried to a special account, supervised in the ordinary way by the Ministry of Finance; it received, as working capital, 100

<sup>11</sup> Decree of 4th February 1918.

<sup>12</sup> Law of 20th June 1918 and decree of the 28th.

million francs, included in the budget of the Ministry of Food Supply. The feature common to these Offices was that they had a budget and financial autonomy, which does not mean that they always confined themselves to buying and selling, or distributing subsidies.<sup>13</sup> The National Office of Disabled and Discharged Soldiers, set up in conformity with the law of the 2nd February 1918, was intended both to supervise private associations and committees and grant them subsidies, and also to organize a system of information, and to advise the Government in regard to measures concerning disabled and discharged soldiers.

The character of *Committees* and *Commissions* was far more vague. The administration during the war used these terms, it would seem, almost indifferently, to designate at one time a consultative body formed of voluntary members who studied some given question or group of analogous questions and worked out the solution; at another an executive body, which elaborated the detailed application of some general decision and rendered services practically identical with those performed by a section of the central department. An example of the former is seen in the Consultative Commission on Rents, set up<sup>14</sup> to examine the results of the law of the 9th March 1918: it was presided over by the First President of the Court of Appeal and comprised officials of the Ministries of Justice, the Interior, Finance and Labor, besides members selected outside the Government service by the Minister. The interdepartmental Committee on Cotton belonged to the second type; it, likewise, was composed of representatives of the principal ministries and of the Head-quarter Staff, and of manufacturers and dealers. Its task was to ascertain the needs of the industry, to determine the quantities of raw material to be imported, and to fix sale prices.

The designations of these bodies, therefore, are not a clear indication of their functions; this is one of the sources of error and confusion to be found in the administrative organization of the war.

The *Tableau Général de la composition des Ministères* gives, on the morrow of the armistice, a methodical list of the principal Offices,

<sup>13</sup> An Office was frequently supplemented by a consultative committee, which in theory supervised its proceedings and examined its programs, *e.g.* the Consultative Committee on agricultural chemicals, created by decree of the 3rd July 1916.

<sup>14</sup> Decree of 18th March 1918.

Committees, and Commissions dealing with questions relative to the state of war, attached to the several departments. They numbered 291; and more than 80 were attached to the Ministry of War.

Moreover, in addition to these general services collaborating in some capacity in the *decisions* arrived at by the executive, the war was constantly developing new 'exterior' services, charged with the duty of *applying* this mass of decrees, *arrêtés* and circulars, and endeavoring, in theory, to convert the law into a practical reality—except when by weakness or incapacity they set about retarding its effect. Here again, it is the general method employed in developing these services that we must attempt to outline.

In 1915, when the needs of the army in the matter of stores and munitions were revealed, the Government proceeded to organize, by ministerial decisions, fresh bodies of officials, which multiplied with amazing rapidity: an industrial service, services for heavy manufactures, for chemical plant, for labor, a technical service, a motor-car service—these were a few of the special bodies concerned with armament in the middle of 1915. At the Commissariat there sprang suddenly into existence an Inspectorate General of Food Supply, an Inspectorate of Clothing, a Directorate General of Services, and so on. The *Rapporteurs Généraux* of the Budget Committee did not conceal their surprise and uneasiness at this vast increase of executive organs.<sup>15</sup>

Before long, economic needs gave rise to somewhat different developments in the war administration. When the question arose of maintaining agricultural or industrial activity, of distributing commodities or collecting taxes, it was frequently the local authorities that took the lead. The mayors were authorized, in virtue of their general powers, to fix maximum prices for bread and meat, and applied them from the outset of the war. The prefects set up committees alongside of them, which at first had only a semiofficial existence. Thus came into being the district Relief Committees, which collected subscriptions, distributed grants to ambulances, found employment for discharged soldiers, and saw to the training of disabled soldiers, long before the State took charge of these services. The question of agricultural labor, the problems of raw materials and

<sup>15</sup> *Rapports* of M. Milliès-Lacroix, 387 (18th November 1918), 462 (22nd December 1915).



industrial work, were dealt with in several departments by semiofficial committees before these functions were officially recognized by the law. As the State intervened, especially from 1916 onward, by grants in aid of the local budgets, it naturally strengthened its control; and as it distrusted the ability of mayors to enforce taxes and requisitions with strictness, it withdrew from them some of the powers that they had assigned to themselves, and placed these in the hands of the prefect and of the auxiliary services that it organized. The régime of discipline and concentration, which accorded with the requirements of a state of war, tended to become stricter. It was at this moment that the general services, the commissions and committees that were to direct these branches of the national activity, were constituted at the headquarters of the central government.

Finally, the last period of the war introduced an important innovation in the 'exterior' services of the administration: the State developed a policy of collaboration with business men and manufacturers. The 'consortium' was the most interesting application of this policy. It was an association of dealers or of manufacturers, interested in the same category of goods, who centralized demands, purchased raw materials abroad, and sold the imports to the members of the association, under State supervision. In theory, therefore, the State assumed 'no financial part' in the matter.<sup>16</sup> It left the care of conducting the business to those concerned, instead of entrusting it to a body of officials; it confined itself to supervision. In practice, the 'consortium,' which took no part in arriving at the general decisions, was attached to one of the executive committees, composed of officials and experts, referred to above. It was this committee that supervised the consortium, supplied means of transport, and fixed prices. In some instances, even, it was the State that undertook the purchase of the raw material, and handed it over to the consortium against repayment of its expenses.<sup>17</sup> The first association of the kind was formed in the middle of 1916.<sup>18</sup> As prohibition on imports developed, as economic agreements were made with foreign groups, and as the mercantile marine was requisitioned, the consortium became

<sup>16</sup> Delemer, *op. cit.*, p. 42.

<sup>17</sup> Bassetti, *Les Consortiums, étudiés spécialement au point de vue de leur développement en France pendant la guerre*, Paris, Sagot, 1919, p. 2.

<sup>18</sup> 2nd August 1916. Office for industrial purchases for the invaded regions. The Ministry of Commerce supplied the working capital.

in 1918 an essential piece in the economic mechanism of the country. Undoubtedly this régime impaired the freedom of transactions, abolished competition, and gave certain manufacturers an undue advantage over their colleagues outside the consortium. But the disadvantage was of secondary importance, said the partisans of the method, since the associations would have only a temporary existence, and would disappear on the conclusion of peace.

This concentration of effort, moreover, which was the national outcome of the state of war, was not as absolute as the facts above related might lead one to suppose. Certain new tendencies mitigated its severity. The necessity of turning local resources to the best advantage led the government to set up organisms for the several regions, such as consultative economic committees in each military district (31st August 1915), and associations of Chambers of Commerce (25th August 1917). This procedure proved efficacious. Without eluding the guidance of the central government, these organisms were able to introduce greater elasticity into the application of general decisions, to procure such decisions if necessary, and to increase their effectiveness.<sup>19</sup>

2. A sketch of the methods adopted in order to cope with the new duties of the State can give only a very inadequate idea of the character of the public services. These offices, these committees, these consortiums, all these direct or indirect manifestations of public authority, were juxtaposed and combined, or superimposed one on another, under the pressure of practical necessity. The complexity of the administration can be seen if one attempts to follow their emergence in one of the most important spheres of national activity, the economic sphere. From 1915 to 1918, the services charged with food supply, transport, and commerce were undergoing perpetual transformation. On the eve of the armistice, the administrative arrangements were far from having assumed what one might consider a satisfactory aspect.

On the 6th August 1914, an investigating committee had been appointed to collect information on the state of the food supplies; it was transformed on the 8th September into a 'service of civil food supply,' which was to 'examine and estimate' existing stocks, ascer-

<sup>19</sup> See on this subject the work by M. H. Hauser in this series.

tain the quantities that would have to be bought abroad and facilitate their transport. At first this service was not itself required to make the purchases; for this it made use of the Chambers of Commerce, which received advances of funds from the State. It endeavored to ascertain local requirements beforehand through the prefects, in order to settle the destination of consignments. But, as early as the winter of 1914, the Government began itself to organize the purchase of certain commodities, in order to assist private trade; it did not as yet pretend to take the place of private initiative entirely.<sup>20</sup>

On the 4th December 1914, a service for the purchase of coal was established in the Directorate of State Railways; it was soon supplemented by a committee for the distribution of fuel, attached to the Ministry of Public Works. The organization of a national coal office was talked of.<sup>21</sup>

The first purchases of wheat took place in February 1915.<sup>22</sup> The service charged with this duty had to interrupt the experiment for lack of sufficient credits;<sup>23</sup> but when the law of the 16th October 1915 had been voted, authorizing the purchases and providing working capital, a *consultative committee* came into being, to direct the proceedings of the service; it worked in connection with an inter-allied body, the *Wheat Executive Committee*, instituted on the 29th October.

A *Superior Commission* had been formed on the 21st June 1915, with the duty of organizing the import and sale of refrigerated meat. Anxiety to increase the yield of the country's agriculture manifested itself about the same time. The *Agricultural Labor Office*, instituted in May 1915 with a State subsidy, recruited colonial labor and arranged for transfers of gangs of laborers from one part of France to another; it was, besides, only one branch of a much vaster or-

<sup>20</sup> See above, p. 53.

<sup>21</sup> Cf. L. Cornet, senator, *Histoire de la Guerre*, I, p. 145. The *Commission Supérieure Nationale*, constituted by the Government in the first days of the war, to deal with 'problems of an administrative and economic order,' included five politicians of the first rank among its vice-presidents. Its object was principally to associate the leading members of the Parliament with the decisions of the Cabinet.

<sup>22</sup> The Chamber discussed this subject on 23rd December 1915. The *Bureau National* was founded on the 12th July 1916.

<sup>23</sup> See above, p. 58.



ganization.<sup>24</sup> The Ministry of Agriculture created a *Consultative Committee on Agricultural Questions* (9th November 1915), while the communes had their *Agricultural Committees* (2nd and 9th February 1916) and the military districts their *Consultative Economic Committees*.

Finally, whereas the *Military Commission on Inland Navigation* regulated water-borne transport within the country, a *Committee on Maritime Transport*<sup>25</sup> was appointed on the 29th February 1916 to study the question of freight and to draw up a program of imports; this in turn was carried out by an *Executive Committee on purchases and sea transport*; but this committee ceased to exist before the end of the year.<sup>26</sup>

The adoption of the laws of the 20th-22nd April 1916, instituting the régime of requisitions and fixed prices for a large number of further commodities, entailed the creation of new services, which the *Central Food Supply Committee*, set up on the 6th July 1916, endeavored to coördinate.<sup>27</sup> This committee, composed of officials, was required to 'draw up a statement of resources and requirements' and to consider measures connected with the application of the law. Sugar was one of the commodities to which the new law applied. Accordingly a *Pricing Commission*, and then a *Distributing Commission* had to be organized (8th August 1916). To increase the home output, a *Commission to develop the yield of sugar per acre* set to work from the 5th December 1916, followed presently by another committee which investigated 'the measures calculated to increase the yield of sugar-beet,' and by a committee on colonial sugar; while a conference considered the manufacture and sale of saccharine. Five organisms for a single commodity! Naturally special committees had to be set up to supervise the trade in coffee, in oils and fats, in fertilizers, etc. And yet all these numerous services were concerned only with the supply of the civil population. The Commissariat continued to deal in the

<sup>24</sup> There existed *Offices* of the same type dealing with the employment of munitions workers, disabled soldiers, etc. These offices were attached to the Ministry of Labor and worked in concert; they constituted, therefore, a central organization dealing with employment.

<sup>25</sup> The members of the committee were the heads of services in the Ministry of Food Supply and the Ministry of Foreign Affairs.

<sup>26</sup> Decree of 27th December 1916. *Journ. Off.*, p. 11. 172.

<sup>27</sup> Cf. report by M. Victor Boret, No. 2377.



same way with the requirements of the army ; so that there was duplication in the matter of purchases and transport. It was not until the 23rd December 1916 that the Government decided to attach the services of military supply to those of civil supply, under the direction, first of an Under-Secretary of State, and later of a Minister.

After the crisis of the spring of 1917, when exceptional measures were adopted to maintain the supply of wheat pending the new harvest, the rôle of the State was still further extended. The law of the 3rd August 1917 gave it a general power of requisitioning supplies and of fixing prices to meet the needs of the country as a whole, while it became apparent that the distribution of commodities must be more strictly regulated. Alongside of the new offices dealing with wine, cider, and meat, and of the consultative committees reporting on applications for supplies, there sprang up a *Central Foodstuffs Office* (10th November 1917) to facilitate the provisioning of co-operative societies, municipalities, and commercial associations.<sup>28</sup> New services were set up to deal with the wheat trade within the country,<sup>29</sup> with the supervision of stocks, and with the distribution of food cards.

It was during the same period that the control of transport developed: on the 7th October 1917 a *Committee of Control* over the mercantile marine was instituted to deliver licenses to trading vessels. A little later (13th December 1917), the *Executive Committee on Imports*<sup>30</sup> was charged with a task analogous to that of the old Committee on Maritime Transport: it kept in touch with the departments of Commerce, of Foreign Affairs, and of the Mercantile Marine, and had the duty of determining the general program of imports in the light of the requirements of the country and the tonnage available. After the shipping had been requisitioned by the State (15th February 1918), the organization was modified: it was the *Executive Committee on Maritime Transport*, established on the 20th April 1918, that became the preponderating body. The State became the sole shipowner. Bureaus, services, and committees had to be multiplied in order to conduct the shipping business.

<sup>28</sup> It was composed of representatives of cities, of syndicates, etc.

<sup>29</sup> The law of the 30th November 1917 created a State monopoly in the home wheat trade.

<sup>30</sup> There existed also, since 1916, a *Consultative Committee on Imports*.

After this great development, there was not much room left for further progress. By fixed prices and requisitions, by prohibitions on imports and exports, all the chief members of the economic framework which guided and confined the country's activity were now set up. Nevertheless, during the last period of the war, the services were further extended and complicated; it was particularly the supply of mineral oil that now attracted the attention of the public authorities. Since the 13th July 1917 there had been a *General Petroleum Committee*; and since October, a *Technical Section* at the Ministry of Commerce. A *Petroleum Consortium* was organized on the 29th March 1918, which bought from the State the oil that it imported, and resold it to the members. But now there was a change of system: a *General Commissariat of petroleum and motor spirit* was formed on the 21st August 1918. On the 1st February 1919 this *Commissariat* assumed the appearance of a Ministry: it had a general secretariate, a 'home service,' a purchasing service, a group of technical services, a distributing service (besides a *central office* for the distribution of motor spirit) and a service for the control of consumption! This is a good example of the exuberance with which administrative plants will grow.

3. Naturally these constant transformations, these temporary structures which masked the framework of the public departments, gave rise to the most astonishing complexity. The services that grew up in this groping and hesitating fashion did not always answer to an obvious requirement; they were not always in their right place. Overlappings and duplications were not infrequent; a few practical examples will illustrate some of these defects.

A Ministerial *arrêté* of the 30th April 1916 organized in the Ministry of the Interior a *Reconstruction of Buildings Service* for the invaded districts. This was only a first step. On the 18th May there appeared, by decree, an *Interministerial Committee* 'to help in the restoration of the districts that have been invaded or have suffered from acts of war'; its business was to 'centralize' investigations and reports, and to recommend 'appropriate measures.' A further decree, a few days later,<sup>31</sup> determined its composition: it included the Ministers themselves who dealt with these questions—the

<sup>31</sup> 6th June 1916.

Ministers of Labor, of Food Supply, of the Interior, of War, of Public Works, of Commerce, and of Agriculture. But in April 1917 the Committee was remodeled. This remodeling was presumably inadequate, since, on the 28th July, an '*Executive Committee*' was instituted 'to carry out the measures agreed on in respect of restoration,' while a *Superior Committee* was to collect public and private subscriptions, in money or kind, assisted by an *Information Office*. Notwithstanding this, on the 25th September, a special committee, attached this time to the Ministry of Public Works, was appointed to consider 'the general measures' connected with the reconstruction of buildings and the restoration of facilities for habitation. But these were only investigating services. The armistice followed and the real work began: there was now a Ministry of Liberated Districts, around which new services took up their duties. In the single month of December 1918, there came into existence a *Commissariat General for Restoration*, a *General Control of Restoration Work*, and a *Secretariate General of Industrial Restoration*, all which did not deter the Government from setting up a committee to consider the economic restoration of the invaded districts and a special committee on the rebuilding of dwellings. The *Service of specially urgent works*, with an interdepartmental committee superadded, was created only later, at the end of January 1919, while the *Consultative committee on losses*, and the *Commission for the supervision of contracts* were not set up until March.

The 'economic services' presented a very similar picture. In October 1915 there was at General Headquarters a *Service of Economic Investigations* which supplied the command with such general information as it required, while two services at the Ministry of War in Paris dealt with questions almost identical with the above: a *Control Section* supervised telegraphic communications, in order to check contraband of war and trade with the enemy; and an *Economic Questions Section*, created in December 1915 in the office of the Under-Secretary of the Military Commissariat, considered the measures required to maintain the life of the country. This did not prevent the Ministry of Foreign Affairs from also possessing a special section, dating from April 1916, to study the economic activity of the belligerent countries; nor the President of the Council from having a regular résumé prepared of the information relating to finan-



cial and economic matters contained in Austro-German newspapers and reviews.

Time passed: these services were modified, detached from one Ministry and attached to another; but their number did not diminish. At the end of 1918 there were at least seven of them.

The study of foreign opinion, and particularly of the political life of the Central Powers, also gave rise, throughout the war, to numerous and scattered innovations. There were in 1916 four services working practically for the same purpose. In the Minister of War's office there was a bureau for the study of the foreign press<sup>32</sup> whose functions covered newspapers in all languages and of all countries, belligerent and other, but which of course devoted special attention in its daily and periodical bulletins to the German and Austrian press. Under the ægis of the Presidency of the Council, the collection of *War Documents* furnished every month a picture of the political life of the Central Powers. General Headquarters likewise had, at Belfort, an intelligence service which produced a daily type-written bulletin—translations of articles preceded by a general review. Nevertheless it was deemed worth while to set up, at Berne, a Press Bureau, which received the German papers earlier and drew up, morning and evening, a bulletin of considerable interest. No doubt these services each had a special character; some were designed to supply the need for day to day information, others to furnish periodically a general survey. But it is difficult to believe that these parallel services would not have profited from being coördinated under a common head.<sup>33</sup>

<sup>32</sup> Subsequently attached to the staff of the army, and then, after the armistice, to the Ministry of Foreign Affairs. Cf. Julien Cain, *Revue de Synthèse Historique* Nos. 97-99, pp. 87 *et seq.* I published in the same number, pp. 68 *et seq.*, a short survey of principal French and foreign press bulletins.

<sup>33</sup> It would be easy to multiply examples. In August 1915 there were four services concerned with chemical war material. It took several months and the intervention of the Army Commission to secure the formation of a single autonomous service. The General Statistical Office has endeavored to draw up an enumeration of the services and commissions that in 1918 were investigating questions relative to the resumption of normal conditions after the war: more than eighty-six of these were discovered. At the time when peace was made, the Ministries of War, of the Marine, and of the Colonies each had an Air Service; in addition to which there were two inspection services, and three services dealing with equipment, besides an interdepartmental commission on civil aeronautics, and an aerial navigation service.



Brief as it is, this sketch produces a feeling of astonishment, and also of uneasiness. What a multitude of services, committees, and commissions! Their respective functions were not always well defined; their nomenclature was vague. Their very existence might be unknown: the *Journal Officiel* did not in all cases record their creation; very frequently these temporary organisms were set up by simple ministerial *arrêté*; occasionally they were the outcome of a mere personal summons. Sometimes they worked, or existed, unknown to their immediate neighbors. They disappeared unobtrusively, for it was only rarely that they were abolished by *arrêté* or decree; their dissolution passed unrecorded; it was a *de facto* process.<sup>34</sup> It is not surprising therefore to hear of 'chaotic' or 'contradictory' decisions; nor is it surprising that there should have been more and more red tape: 'Six months ago,' wrote M. André Lebon in 1916,<sup>35</sup> 'two investigations, two checks, two counter-signatures were required before a contract was complete; now eleven instructions, eleven counter-signatures are required!' The *Rapporteur Général* of the Budget Committee of the Senate, M. Milliès-Lacroix, also condemned 'the hesitations, the successive changes of policy, the accumulation of official bodies.'<sup>36</sup> Prompt and clear decisions were required from the executive, as the Government constantly repeated. It was a strange way of obtaining them. But members of the Parliament, while they did not refrain from criticizing this multiplication of services, helped to engender it, by the bills and resolutions that they proposed.

## II. Attempts at coördination.

Throughout the war the Government made vain endeavors to remedy the disadvantages of this 'proliferation of services.' It desired to group these more logically, to connect them more effectively. But these constant attempts did not proceed beyond the stage of intentions or projects.

1. The first difficulty resided in the duplication of the administrative services of the army. General Headquarters, after the Battle

<sup>34</sup> Cf. the remarks of M. P. Dubois in the *Revue de Droit public*, 1919, p. 82, note 1.

<sup>35</sup> *Problèmes économiques de la guerre*, 1<sup>e</sup> série, p. 85.

<sup>36</sup> No. 462, pp. 28 and 47.

of the Marne, was suddenly confronted with new problems: the burden of fixing the program of manufacture fell upon it; it was called upon to settle the question of the provisional exemption of factory hands; it reprovisioned the reconquered districts and administered the portion of Haute-Alsace occupied by the French forces. And why should it not extend its sphere of action? Ought it not to concern itself with public opinion in Germany, and with the blockade of the Central Empires? These questions, in theory, no doubt fell outside its province; but the Government was far away, at Bordeaux, very unfavorably situated for seeing to the execution of measures, and very ill-equipped for organizing services. Circumstances invited the command to extend its functions and multiply its offices. It did not, of course, give them up when the new services were organized in Paris. It remained, as M. Briand put it, 'lost in a thicket of administrative bodies.' In 1915 General Headquarters was a veritable Ministry: there were 250 officers at Chantilly; in the army zone, the command was omnipotent; in Paris, the Ministry of War was 'emptied or nearly so'! But only in a certain sense: it had a number of services and a large personnel; a large part of its functions, however, were reduplicated by those exercised, in practice, by General Headquarters, nor was the Ministry the predominant partner; it figured as subordinate to the command.

This was an abnormal and inconvenient situation. It was strange that General Headquarters should concern itself with 'finance, political economy or diplomacy,' that it should have a report drawn up on the resources of Roumania, that it should decide on the despatch to the Russian army of 30,000 rifles of latest pattern without even informing the Minister,<sup>87</sup> and that it should correspond, not only with allied General Headquarters, but with the Ministers of War of the allied states, directly and not through Paris. These questions pertained to government. The High Command would have found advantage in dispensing spontaneously with the services it had created, if these had not defended their own existence so vigorously. Its task was heavy enough without cumbering itself with subsidiary details.

These arguments took shape when, after the resignation of M. Mil-

<sup>87</sup> These examples are quoted by Mermeix, *Fragments d'histoire*, Paris, 1919, pp. 362-364.

lerand, General Galliéni was called to the Ministry of War (29th October 1915). The Government endeavored to relieve the command of some of its services, and especially to restore the 'Army Control Corps' to its normal functions. The Controllers, who are the direct agents of the Minister for the inspection of the administrative and financial services of the army, had ceased, since the outbreak of the war, to carry out their ordinary duties. They had been placed by the side of the District Commandants—general officers with little knowledge of questions of administrative and economic organization—to assist them with their advice. General Galliéni recalled the Controllers to the Ministry, and sent them out on inspection of the services, including those of the army zone which were subject to the authority of the Commander-in-Chief.<sup>38</sup>

Intervention in the Parliament followed: at the end of January, M. Accambray, and in February, M. Abel Ferry, drew attention to the encroachments of General Headquarters, its tendency to 'autonomy.' They broached the whole question of the relations between the Government and the high command.<sup>39</sup> General Headquarters thought the moment had come for a few concessions. On the 26th March it offered to surrender its 'economic service,' which would be attached to the central administration.<sup>40</sup> It asked only that it should be kept informed of facts of an economic character that were calculated to influence the military situation. The reform was carried out at once. But this was only a detail, and did not pacify the critics in parliamentary circles. On the occasion of the first Secret Committee of the Chamber of Deputies, on the 19th June 1916, M. Bénazet led the attack. General Headquarters had become 'a government on a small scale.'<sup>41</sup> Was the Ministry determined, he asked, to react against this and restrict the services at Chantilly to their normal functions—the military operations? M. Briand replied that it was.<sup>42</sup> All services 'essentially governmental' in character would be in the hands of the Government; a large part of these had already been

<sup>38</sup> Cf. statements by General Galliéni in the Chamber, 28th January 1916, *Annales, Débats*, pp. 131 *et seq.*

<sup>39</sup> See below §III.

<sup>40</sup> Cf. P. Bruneau, *Le rôle du haut commandement au point de vue économique*, Paris, 1924, pp. 25-26.

<sup>41</sup> Secret Committee, *Journ. Off.*, p. 13.

<sup>42</sup> *Ibid.*, pp. 44 *et seq.*

resumed. The Cabinet intended gradually to reduce General Headquarters to a mere 'organ of command.'

These promises, however, were far from being immediately realized: in November 1916, when the second Secret Committee<sup>43</sup> sat, the transfer was not yet complete. 'It soon will be,' said M. Briand. 'Chantilly, such as you have criticized it, is vanishing.' And yet, five months later, after the unfortunate offensive of the 16th April 1917, the Under-Secretary of State for Health was lamenting to the Army Committee of the Chamber that 'the Under-Secretary of State has no sort of authority or power; he takes no part in the preparation of the estimates; he is kept informed by the command only so far as the latter thinks fit.' He complained of 'his entire subordination to the command.' This situation was put an end to by a decree of the 11th May. The Government had, by that time, spent nearly eighteen months endeavoring to liberate the services of the Ministry from their dependence on General Headquarters.

2. It found even greater difficulty in organizing a logical and final grouping of the public services. Throughout the war successive Cabinets were constantly rearranging the list of Ministers and their respective spheres, by a series of tentative measures of an obviously unsatisfactory character. 'When functions are transferred from one Ministry to another,' wrote M. Louis Marin,<sup>44</sup> 'when services pass from one authority to another, difficulties occur in following up current questions, in distributing subjects, files, and archives between the old and the new offices; and these difficulties delay business and in practice do away with responsibility.' The various Governments appeared indifferent to this.<sup>45</sup>

The Viviani Government, which was remodeled on the 26th August 1914, had maintained the several ministerial departments as they existed before the declaration of war. It had only suppressed—a surprising measure—two Under-Secretaryships, that of the War Department, at the very moment when its task was to be immensely enlarged, and that of Mercantile Marine. The services composing these two Under-Secretaryships were accordingly placed once more

<sup>43</sup> Secret Committee, *Journ. Off.*, p. 243.

<sup>44</sup> *Rapport* No. 4091.

<sup>45</sup> See the composition of the Ministries during the war: *Société d'Histoire moderne, Les Ministères français, 1912-1922*, Paris, 1922.



under the direct orders of the respective Ministers. The general establishments remained the same until the 29th October 1915; but these Under-Secretaryships reappeared and developed. The Under-Secretaryship for the Mercantile Marine was reconstituted on the 14th March 1915. Then, under pressure of the Parliament, the remodeling of the Ministry of War began. The Minister's burden was too heavy, it was said—especially by his opponents: 'In France, so long as the enemy occupies part of the country, the life of the army is so closely bound up with the life of the nation that it now rests with the Minister of War to foresee and organize everything.' The Directors collaborating with the Minister in fact had, it was urged, responsibilities greater than they could carry. By placing at the head of the most important directorates Under-Secretaries of State, chosen from members of the Parliament, the Government would be entrusting the vital services to men who, by reason of their personal position, would bring greater authority to the discussions with war contractors, would have a more exact appreciation of economic questions, would be more supple and independent in action, would have access to the Council of Ministers to make known to it the requirements of the army, and would more easily enter into relations with the Committees of the Chamber and Senate.<sup>46</sup> The Government itself had proposed to create an Under-Secretaryship for Artillery and Munitions, and this had been carried out by a decree of the 18th May 1915. It now entered upon the course along which parliamentary opinion was urging it. The Commissariat services, the Health Department, and Military Aviation were successively grouped under Under-Secretaries of State. In theory their respective functions were scarcely greater than those of a Director-General.<sup>47</sup> Charged with the 'general direction of the services,' and the 'detailed supervision of the carrying out of ministerial orders' they were responsible *to the Minister*.<sup>48</sup> In practice, their autonomy rapidly developed. 'The Minister's authority, by which decrees are issued, is no longer more than a pretense,' wrote the *Rapporteur Général* of the Budget Com-

<sup>46</sup> These ideas were developed in a proposal by M. Hennessy and in a retrospective report by M. Louis Marin, No. 4091.

<sup>47</sup> Cf. the observations of M. Milliès-Lacroix, *Rapport, Sénat, No. 387*, 18th November 1915.

<sup>48</sup> Before the war, Under-Secretaries of State were invested with authority *delegated* by the Minister, and were *personally* responsible.

mittee of the Senate at the end of 1915.<sup>49</sup> The Under-Secretary would set up an 'office,' give his orders to the heads of the technical services, directors or assistant directors, and extend his authority over 'exterior services' (equipment, manufacture, inspection, etc.). This was almost inevitable. But was there not a danger that unity of action would be difficult to maintain in these conditions, and that these 'Under-Ministers' would tend to free themselves from all connection with the principal department?

The new Cabinet of the 29th October 1915, presided over by M. Briand, maintained as a whole the arrangement adopted by the previous Government;<sup>50</sup> it even enlarged the functions of the Under-Secretary for Artillery, M. Albert Thomas, by a decree of the 9th November. But from the time of the formation of the new Briand Ministry of the 12th December 1916, the arrangement of offices underwent more frequent and more important modifications. Services were attached and detached, united and divided, so often that it would be tedious to attempt to follow these vicissitudes in detail; they affect, moreover, only the grouping of the services connected with the economic and social life of the country.<sup>51</sup>

M. Briand wished to diminish the number of ministries, so as to 'concentrate' authority; he combined in a single Ministry the public works, transport, and food-supply services; similarly commerce, agriculture, labor, and posts and telegraphs; similarly again justice, education, and fine arts. On the other hand armaments and munitions were constituted a separate department. But the number of Under-Secretaryships was increased.<sup>52</sup> 'You have not tightened up your Government,' said M. Charles Benoist to the President of the Council, 'you have changed its form. In place of twenty-three Ministers and Under-Secretaries, of whom five were Ministers of State, you give us ten Ministers and ten Under-Secretaries. You have not carried out a real regrouping of services; you have merely coupled up certain departments and divided others.'<sup>53</sup>

<sup>49</sup> M. Milliès-Lacroix's *Rapport*, No. 387, 18th November 1915.

<sup>50</sup> The Under-Secretary of State for Foreign Affairs was abolished.

<sup>51</sup> The departments of Finance, War, Marine, Colonies, and the Interior remained without essential modification in the various Governments from the 12th December 1916 onward.

<sup>52</sup> Nine in place of six.

<sup>53</sup> *Chambre, Débats*, 1917, p. 318 (8th February 1917).

The 'concentration' inaugurated by M. Briand did not survive his Cabinet. The Ribot and Painlevé Governments (20th March-12th September 1917 and 12th September-16th November 1917) comprised fourteen ministerial departments.<sup>54</sup> The Ministry of Food Supply was now set up.<sup>55</sup> M. Clémenceau's Cabinet (16th November 1917) did not alter the number of Ministries, but combined Agriculture and Food-Supply under one Minister, and made the Blockade Services into a separate department.

As for Under-Secretaryships, they were still an imposing array. Some survived the changes of government, for instance, those of Health, Aviation, and Army Administration (all three attached to the Ministry of War), Financial Administration, and Mercantile Marine; others appeared and disappeared to suit ministerial arrangements. For instance, an Under-Secretaryship for Inventions existed from the 20th March to the 16th November 1917, which disappeared when M. Clémenceau came to power; on the other hand the Painlevé and Clémenceau Cabinets appointed an Under-Secretary of State in the Ministry of the Interior, where the need for one had not previously been felt. Labor, Commerce, and Supply, all had ephemeral Under-Secretaryships. Nor must one trust official titles: as between one Government and another, the functions of the same Under-Secretaryship were modified.

It is impossible to trace any logical evolution in this medley of decrees and *arrêtés*. One can see only a single idea common to them: the progressive restriction of the functions of the Minister of War; who surrenders one after another the supply services and the munitions services.

Thus, while successive Governments were constantly proclaiming the necessity for concentration of power, unity of opinion, and continuity of policy, never were Cabinets larger, nor the distribution of departments and under-secretaryships more unstable than during the war. The Mercantile Marine Services, for instance, were attached successively to the Ministries of Marine, of Public Works, and of Food Supply; they were then restored to Public Works, and finally passed to the Ministry of Commerce. For a time (20th June-12th September 1917) the Under-Secretaryship for Munitions,

<sup>54</sup> Exclusive of Ministers of State.

<sup>55</sup> In the Painlevé Government, Maritime Transport was attached to it.

which belonged to the Ministry of Armament, was simultaneously attached to the Ministry of Supply, because among its functions was included the importation of mineral oils. The Blockade Services, at first mixed up with the general business of the Ministry of Foreign Affairs, became an Under-Secretary's province, then passed under the direct authority of the President of the Council, and then, in the Clémenceau Government, by a strange process of amalgamation, were constituted a joint department with the services of the Liberated Districts.

Parliamentary critics unremittingly attacked these practices, with more zeal perhaps than hopes of amendment. They were right, undoubtedly, in their analysis of the causes of this instability. The distribution of services and the number of ministries were not dictated by reasons of public interest, but by considerations of a personal character. When a new Cabinet was formed, the extent of each ministerial department was a matter of bargaining, on which the success of the political 'combination' in some measure depended. If it is decided to create an Under-Secretaryship, said M. J. L. Breton,<sup>56</sup> 'it is by no means because its utility to the public service is recognized, but solely to satisfy a parliamentary group which is insufficiently represented in the ministerial combination, or, more simply, to find a billet for a personal friend of the President of the Council. Similarly if a directorate is transferred from one Ministry to another, it is not because it is thought that it will be better placed there, but solely because a new Minister wishes to extend his functions and sometimes makes this a condition of his acceptance.' These were well-known facts and no longer surprised anyone.

It had been proposed more than once, before the war, that the creation of a new ministerial department or a new Under-Secretaryship of State should require a law; but this proposal never came to anything. 'It is incredible,' wrote M. Louis Marin, 'that a single road-mender cannot be appointed additional to the establishment . . . while the nation allows the arrangement of departments to be turned topsy turvy, and services to be detached here and attached there, indiscriminately.'<sup>57</sup> The circumstances, however, were not favorable to the adoption of a rigid system. M. J. L. Breton himself,

<sup>56</sup> Bill No. 2130 (*Chambre*) 19th May 1916, explanatory statement.

<sup>57</sup> Report No. 3330, p. 13.



who on the 19th May 1916, proposed that the number of ministries and under-secretaryships should be definitely fixed, and their functions exactly laid down, recognized that this reform must be postponed until after the end of the war. The Universal Suffrage Committee, to which the proposal was referred for consideration, did not even take the trouble to report on it.<sup>58</sup>

It was not easy to maintain proper touch between ministerial departments and under-secretaryships in this perpetual state of transformation. Where questions had to be considered in which several ministries were interested, the Government had constant recourse to committees and commissions. Thus there was an interdepartmental Committee on Public Security, comprising representatives of General Headquarters, of the Police, and of the Ministries of War, Marine, and Foreign Affairs, under the presidency of the Minister of the Interior; an interdepartmental Labor Commission, which distributed the available supply of labor (foreigners, colonial natives, and prisoners of war) among the several ministries and public services;<sup>59</sup> and others. How many more were there that slumbered, or existed only on paper! Some however were of special importance, as being, in some sort, 'organs of government': to this category belonged the *Economic Committee*, formed on the 12th September 1917, 'to coördinate the action of the services dealing with the country's economic interests,' especially such as concerned food-supply, production, and transport; it was composed of all the Ministers and Under-Secretaries interested, under the presidency of a Minister of State.<sup>60</sup> To this category belonged also the 'interdepartmental committee for the restoration of the invaded districts,' formed on the 18th May 1916 to collect information and promote the necessary measures; seven Ministers and one Under-Secretary sat on it. Both these were committees of the Cabinet, which prepared the work for the Council of Ministers. The idea, in theory, was a happy one, to give Ministers the opportunity of comparing their needs and bringing their efforts into harmony, in the comparative quiet of a small committee.

<sup>58</sup> The reform was voted in 1920.

<sup>59</sup> This distribution might be modified by the Council of Ministers; in practice, it was generally adopted.

<sup>60</sup> As regards Ministers of State, see below, p. 92.

During the government of M. Clémenceau, from the 16th November 1917 onwards, the executive, without giving up these large committees, adopted the practice of appointing *Commissaries General* to coördinate some special class of services. They are found with the most varied and unequal functions. One was charged with the supervision of business relating to colonial troops: the food and hygiene of black troops, recruiting of colonial natives, etc. The competent services, which belonged to the Ministries of War and the Colonies, retained their functions; but the Commissary General was authorized to inspect, to order inquiries, and to demand the infliction of penalties. A 'Commissary for Franco-American war business,' attached to the office of the President of the Council, played in another sphere a somewhat similar rôle:<sup>61</sup> his duty was 'coördinate' military preparations in the United States and their execution on French territory, without, however, relieving the various ministerial departments of their functions. The Commissary General for Public Security, on the contrary, instituted on the 12th February 1918, exercised direct authority over the services whose work he was required to harmonize: the general police, the counter-spy service, and the intelligence service were placed under his orders. But he was required to conform to the instructions that he received from the Ministers as to the measures to be taken in the interests of their several departments. Lastly the Commissary General for Motor Spirit, instituted on the 21st August 1918, exercised yet another form of authority. He effected purchases abroad, arranged the distribution among the civil population, and controlled the trade. He acted under powers 'permanently delegated' by the Ministry of Food Supply, as if he had been an Under-Secretary.<sup>62</sup>

In spite of its desire to keep the services in touch one with another, the executive failed to define clearly the duties of its agents.

The hasty decisions of successive Cabinets during four years failed, as we have seen, to set up a clear and stable distribution of functions among the public departments. But it is only fair to inquire, on the other hand, what new and fruitful ideas experience may have suggested during these four years. In this respect the collabora-

<sup>61</sup> June 19, 1918.

<sup>62</sup> The Commissariat General for the restoration of the liberated districts, constituted on the 29th December 1918, had a similar character.

tion of the Government departments with representatives of private enterprise was the most interesting feature. It is undoubtedly true that in the administrative system that prevailed in France before the war, the solution of new economic problems did not occupy the place that it deserved.<sup>63</sup> The war confronted the State with a situation in which these problems assumed exceptional importance. It could not have solved them without calling in the assistance of experts and professional associations.

The Government selected the most prominent among the rising men outside the parliamentary ranks and placed them in charge of certain ministries. The Ministry of Commerce inaugurated what M. Clémentel called 'a policy of coöperation with industry.'<sup>64</sup> Representatives of the executive came into close touch with men of business, and great manufacturers were called on to give their opinion on export policy, to fix priorities for transport, and to help in the organization of food supply. The State thus had recourse to men with professional qualifications and invited them to assume a part of the functions which it had been obliged to take upon itself. State control, however, was none the less real and vigorous, since the executive maintained a constant right of supervision.

Finally, the administration showed a disposition at times to associate in its decisions those whom the decisions affected, The 'Co-operative reconstruction societies,' which were formed in the liberated districts, were invited to revise specifications and to settle forms of contracts. By these measures, timid as they were, the State showed some elementary understanding of the forces on which it could rely. It encouraged, instead of distrusting, the inclination manifested by those who had suffered by the war to group themselves and combine. In a soil so disturbed these seeds may not have been lost.

### *III. The Government and the conduct of the war.*

Above these agents of authority, above the innumerable services—whose duty it was to provide the country with means of existence and the army with means of victory—was the Government, with the duty of exercising general direction. It rested with the Council of Ministers to take the lead. How was it to interpret its rôle? It had to 'con-

<sup>63</sup> These are the ideas expressed by M. Maxime Leroy in his preface to the book by M. R. Francq, quoted below.

<sup>64</sup> *Annales de la Chambre, Débats*, 28th June 1918, p. 1649.

duct the war,' of course. But to what extent? and by what practical methods?

1. *The Government and the High Command.* The discussions that had taken place before the war on the respective functions of the Government and the High Command gave warning of the difficulties which in fact arose. The President of the Republic was to delegate the duty of leading the armies to a General; the Government, however, retained the power of laying down the broad lines of the military operations. It was not easy to apply these principles in a satisfactory manner. Under parliamentary pressure, under stress of circumstances, the Government modified its system more than once; it cannot be asserted that personal considerations had no influence whatever on its policy.<sup>65</sup>

On the outbreak of war and down to the 2nd December 1915, the régime applied in theory was that laid down by the decree of the 28th October 1913; but it was applied in a spirit that the authors of the enactment had doubtless not contemplated. It was understood that the Minister of War should distribute the means of action between the Commanders-in-Chief on the various fronts, that he should consequently keep their several efforts in harmony, and that while not interfering in the 'conduct of operations,' he should not surrender the 'conduct of the war.' The Government of M. Viviani, after discussion, had decided to adhere to these decisions. 'We state in the clearest way,' said the President of the Council in the lobbies of the Chamber on the 4th August 1914, 'that the Government has no intention of interfering in the command of the troops or in the direct conduct of operations.'<sup>66</sup>

But since the French armies were to operate on only one front—in view of the Italian declaration of neutrality—as there was only one Commander-in-Chief, the Government evidently was deprived of a part of its functions. It surrendered, not in theory but in fact, the right of supervision that it would constantly have derived from the

<sup>65</sup> The work by M. J. Barthélemy, *Les pouvoirs publics et le commandement militaire*, Paris, 1917, gives some interesting but incomplete information on this subject. As to the distribution of administrative functions between the Ministry of War and General Headquarters, see above pp. — *et seq.*

<sup>66</sup> Evidence of M. Messimy, *Procès-verbaux de la Commission d'enquête, sur le rôle de la métallurgie en France pendant la guerre (dite de Briey)*, I, p. 265.



distribution of the 'means of action'—men and munitions. The authority of the Commander-in-Chief was absolute. He had been told 'You are the master of the war, and we are merely your purveyors.' That was the formula by which M. Messimy, at that time Minister for War, sought to sum up the actual situation. It appears indeed that during the first month of hostilities the command made the utmost use of its prerogatives. The Minister complained subsequently that he had 'so to speak, known nothing' of the operations. In vain had he attempted on the 15th August to raise objections. It was only on the 25th August that he interfered, by means of a formal order, to insist on the formation of an army of three corps for the defense of Paris.

The departure of the Government for Bordeaux, and the confusion that ensued in the services, increased still further the authority and independence of the Commander-in-Chief. The control exercised by the executive was insignificant; the Minister watched the vicissitudes of the battle like a distant spectator. 'I should be obliged if you would send the Government no information concerning the operations,' wrote General Joffre to General Galliéni. 'In the reports that I forward, I never make known the object of current operations, nor my intentions.'<sup>67</sup> The civil power even ceased to fulfil the functions of purveyor; for the time the army services entered into direct relations with the contractors. The Government had abdicated. Those practices were soon adopted which in 1915 aroused the protests of the Parliamentary Committees: General Headquarters set about raising 'an impassable fence' around the army zone. When the Under-Secretary for Armament wished to restore mobilized workmen to the factories, he was met by the passive obstruction of General Headquarters.

In spite of the criticisms that began to make themselves heard in the Parliamentary Committees<sup>68</sup> from the early days of 1915, in spite of vigorous discussions at the Council of Ministers,<sup>69</sup> the Com-

<sup>67</sup> Galliéni, *Mémoires*, p. 172.

<sup>68</sup> On the 16th February 1915, M. Accambray asked M. Viviani for the texts regulating and defining the functions of the Commander-in-Chief and his relations with the Ministry of War and the Government. He vainly endeavored to raise a debate on the subject on the 24th June and 26th August 1915.

<sup>69</sup> Cf. Augagneur, *Deuxième Comité Secret*, p. 125.

mander-in-Chief held firm; he was covered and approved by the Minister of War, M. Millerand, who was anxious to leave to the military authority, in circumstances of such great difficulty, 'its full and entire liberty of action.' 'In war,' said the Commander-in-Chief, 'authority and responsibility cannot be divided. Each military chief controls the acts of his subordinates and is himself responsible to his superiors. The Commander-in-Chief is responsible to the Government, which can relieve him if it does not approve his conduct. There can be no other control during the action.' According to this theory, the rôle of government was reduced to the right of punishment; it was no longer its business to guide and direct. This was the formula that the Minister of War adopted before the Chamber.<sup>70</sup>

But the situation changed. The Salonica army was constituted; there now existed two fronts, between which it fell to the Government to distribute the troops, a position aggravated by the fact that the Commander on the Salonica front, General Sarraïl, was a former subordinate of General Joffre, who had relieved him of the command of the Vth army. The Government, on the 4th September, required General Joffre to withdraw four divisions from the front for transfer to Salonica. This interference by the civil power called forth protests from General Headquarters: 'The block of the French armies is one,' wrote General Joffre; 'we cannot consider the armies of the North-East, an army of the Interior, and the Army of Salonica as separate entities, but rather an *ensemble* of forces that we must employ to the best advantage according to the successive requirements of strategy.'<sup>71</sup>

He demanded accordingly that the Superior Council of National Defense, which had not been assembled since the declaration of war, should be reconstituted; the Commander-in-Chief of the armies of the North-East would sit on it, alongside of the President of the Republic, the President of the Council, and the Ministers of War and Foreign Affairs. The Council would have a permanent secretariate which would study 'the conduct of the war as a whole.'<sup>72</sup>

<sup>70</sup> August 20th 1915. M. Viviani, in reply to a question by M. Accambray, stated that the Commander-in-Chief had 'the responsibility and the initiative of the operations'; the Minister, 'the administration of the war.'

<sup>71</sup> Cf. the article by Oemichen, *L'engagement de la coalition en Orient. Revue militaire française*, 1921, pp. 76-78.

<sup>72</sup> General Joffre's suggestions were conveyed in a letter of the 20th Au-

Thus issue was joined on the question of the High Command. M. Briand's Government attempted to solve it by meeting the wishes of the General. At the interallied conferences at which the Commander-in-Chief of the French front was required to be present, the questions of the Near East would come up for discussion: he must therefore be in a position to deal with them on his own responsibility; when that happened, the hostility shown by the General Headquarters at Chantilly to the army of Salonica would probably vanish. On the 2nd December 1915 a decree extended the authority of General Joffre to cover the army of the Near East.

Unity of direction was thus secured, but in favor of a generalissimo. On the other hand, the Government claimed to exercise a wider right of supervision over the decisions of the command. It had a right to ask the Commander-in-Chief for an account of his plans. This was the doctrine that the President of the Council expounded to the Army Commission of the Chamber: 'The Government conducts the war, but it does not conduct the operations. . . . As for the execution, it must give freedom to the men who are qualified to conduct the operations. It may call upon them to render an account thereof; it may say to them: "You prepared an operation; tell us how you prepared it." . . . It cannot go further.'<sup>73</sup>

According to this system, therefore, the projects of the High Command were open to discussion by the Government.

But the decree of the 2nd December 1915 had perturbed the Parliament. Secret memoranda, emanating from enemies of the generalissimo, had been communicated to deputies and senators, in which a stricter control was demanded over the actions of General Headquarters.<sup>74</sup> The President of the Council was reproached with having 'surrendered his rights to General Joffre.' On the 11th December 1915, M. Accambray requested the Government to attach to itself a technical adviser, 'to criticize and supervise,' who should be 'completely distinct from and independent of the command'; the Cabinet would then be in a position to have submitted to it, *after*

gust 1915. The permanent secretariate functioned during a few weeks under the name of '*Section d'études de la défense nationale*.'

<sup>73</sup> General Pédoya, *La Commission de l'armée pendant la guerre*, p. 364. On the 9th December, the discussion of an interpellation by M. Constant had been adjourned at M. Briand's request.

<sup>74</sup> Mermeix, *op. cit.*, p. 58. The author has seen some of these memoranda.

each important operation, 'all the information that General Headquarters obtains for itself,' and it would thus understand the reasons for a reverse. The President of the Council did not reply; he eluded likewise, on the 28th January 1916, an interpellation demanded by M. Brizon.<sup>75</sup>

The situation was difficult: at the Ministry of War, General Galliéni had undertaken to react against the excessive independence of the High Command; he had obtained a 'right of review' over the nominations to, and removals from, army commands, which the Generalissimo had promised to communicate to him thenceforward. He had made it known to the High Command that the Government intended that 'partial offensives' should cease, and they had ceased.<sup>76</sup> Finally he had drawn the Generalissimo's attention to the weakness of certain defensive positions and had asked for explanations. But General Joffre had taken offense. How had the Government obtained this intelligence? It must have received information direct from officers.<sup>77</sup> 'I cannot admit such a procedure,' he declared; 'I require the entire confidence of the Government.' And he threatened to resign.<sup>78</sup> The Government bowed its head; nevertheless, on the 29th December, it summoned a meeting of army commanders at which, in presence of the Minister, the defensive positions were studied on the map.

Thereupon occurred the German offensive against Verdun, which involved the responsibility of the High Command. Two months before, it had refused to allow doubt to be cast upon the security of its defensive positions, but events had proved it to be wrong. The crisis was now at hand. On the 6th March 1916, General Galliéni read in Council of Ministers a memorandum on the necessity of 'reorganizing the High Command.'<sup>79</sup> But his colleagues did not adopt his view,

<sup>75</sup> *Annales de la Chambre, Débats*, 1915, pp. 1687-1689; 1916, p. 139.

<sup>76</sup> Statement by M. Briand to the Second Secret Committee, *Journ. Off.*, pp. 230-231.

<sup>77</sup> It was, in fact, Commandant Driant, a deputy, who had given the information and spread the alarm.

<sup>78</sup> These letters were read to the first Secret Committee by M. Maginot, *Journ. Off.*, p. 3. The Minister's letter is dated 11th December 1915.

<sup>79</sup> The fact is unquestionable. It was affirmed by M. Maginot on the occasion of the first Secret Committee, *Journ. Off.*, p. 3, and was not denied by M. Briand.



and the Minister resigned on the 17th March.<sup>80</sup> During the discussions in Secret Committee, in June 1916, these events were not altogether unknown, and the command was very vigorously criticized. The President of the Council defended the Generalissimo and the decree of the 2nd December 1915. No doubt the Government had confided the direction of all the armies to General Joffre. But on the other hand the Government had resumed its right, so far as the general conception of the operations was concerned. 'The first thing we did, Gentlemen, was to make General Joffre aware that, henceforward, decisions concerning the war, the conduct of the war, would all be taken by the Government itself.'<sup>81</sup> Such was the régime that M. Briand claimed to have established.

As a result of these debates, the position of the Generalissimo—in spite of the attitude adopted by the Government—was shaken. In the army, his authority was assailed by impatient subordinates. At the end of November 1916, M. Briand had decided to relieve General Joffre, but the Cabinet wished to deal tenderly with the great commander who had led the armies at the time of the Marne; while removing him from the effective command, it desired to leave him in a position of the greatest possible distinction. The President of the Council was then led to devise a new definition of the relations between the Government and the High Command. Before long this new régime was announced to the Parliament. On the 29th November 1916, in Secret Committee of the Chamber, M. Briand abandoned his decree of the 2nd December 1915. 'If at the present moment such a decree had to be issued, perhaps I should not issue it.'<sup>82</sup> The command on the French front and that on the Eastern front would again be separated as under the decree of the 2nd December 1913. Unity of direction would be secured, in Paris, by a General who would be the 'technical adviser' of the Government. There would thus be 'a General-in-Chief of the French armies . . . particularly employed on the direction of the war, and endeavoring, in harmony with the Government, to secure solidarity between the commands on the several fronts. There are at present two fronts on which French armies are engaged. There is the Eastern Front; it has its General, who has the widest autonomy for the conduct of his operations so far

<sup>80</sup> He was succeeded by General Roques.

<sup>81</sup> 'Henceforward!' exclaimed M. Jean Bon. But M. Briand did not reply.

<sup>82</sup> Secret Committee, p. 138.

as they are bound up with the comprehensive plan embracing all fronts. And then there is a General commanding the armies of the North and North-East, who also will have the widest autonomy for the conduct of operations so far as they are bound up with the general plan of action on all fronts.<sup>83</sup>

By this system, said M. Briand, the Government has 'all the authority with which the constitution invests it. It has the general political direction of the war, with the indispensable technical advice of a man capable of giving it.'

The Chamber did not seem inclined to rest satisfied with this statement of principles. It wished to have a text, a draft decree, before it, as basis of discussion. 'What will be the respective rôles of the *direction* properly so-called, and of the government control?' What will be the functions of the General-in-Chief, technical adviser to the Government: will he have a 'purely consultative rôle' or 'effective authority'? And how will authority be divided between him and the Minister of War? It was an 'organization based on compromise,' said M. Tardieu; 'instead of concentrating responsibility, you are dispersing it.'<sup>84</sup>

To these practical questions, the President of the Council again replied by a statement of doctrine. The Government had 'the political conduct of the war,' it concerned itself with military execution (movements of armies, disposition of troops) only to superintend (*contrôler*) it. The rôle of the technical adviser would be precisely to prepare, in consultation with the Ministers of War and Marine, the decisions of the Government and to supervise their execution. The Generals commanding on the fronts, after having received the 'directions' (*indications*) of the Government, would have complete liberty for carrying them out. It appeared, therefore, since the Government did not intend to interfere in the movements of troops, that it would leave the Generals commanding on the fronts entirely free to make their dispositions for battle. A deputy, M. Pierre Masse, insisted: 'Will the Generalissimo be empowered to sign operation orders?' In vain: the closure of the debate was voted without any more precise definition by the Government of its proposal.

In reality these decisions of December 1916 never passed out of

<sup>83</sup> Secret Committee, 28th November 1916, pp. 230 *et seq.*

<sup>84</sup> *Chambre*, 13th December 1916, *Annales, Débats*, p. 2634.

the realm of theory. On the 12th December, M. Briand remodeled his Ministry and called General Lyautey to the War Department. When the latter assumed his functions, he pointed out that the regulations of 1913 had not provided for the appointment of a 'Generalissimo, technical adviser.' It rested with the Minister to direct the Commanders-in-Chief. On the 27th December, General Joffre was promoted to be a Marshal of France. No more was heard of the post of technical adviser nor of the régime devised by M. Briand scarcely a month before.<sup>85</sup>

The organization of the High Command had accordingly, after two attempts—system of the generalissimo, and system of the technical adviser—reverted to the point to which the events of the summer of 1915 had brought it. Each front had its Commander-in-Chief and the Minister attended to the general direction of the war. But the actual position in January 1917 was very different from that in September 1915. The Commander-in-Chief on the French front no longer possessed the wide powers that General Joffre had exercised: the Government insisted that the 'letter of appointment' which placed a General at the head of an army or an army corps should be issued and withdrawn by the Minister, on the proposal of the Commander-in-Chief. The Minister unhesitatingly traveled about the front, visited the army commanders, and called for the plans of attack. So true is it that in such matters the letter of the law leaves a wide latitude of interpretation.

Nevertheless the idea of placing a Chief of the Staff beside the Government came up again before long; General Lyautey, himself, thought of adopting it. This chief of the staff would really be a 'technical adviser,' and in that sense the idea was related to M. Briand's schemes, but he would be a *subordinate* of the Minister, and could not give him umbrage. He would provide the Government with the means of information that it lacked. The Minister summoned General de Castelnau, and drew up a decree to define his functions; but the Government preferred to set aside the officer to whom the post had just been offered, and sent him on a mission to Russia. General Lyautey, moreover, soon left office (14th March 1917). The new Minister of War, M. Painlevé, would willingly have revived the project of his predecessor, for he could not dispense with technical

<sup>85</sup> Painlevé, *Comment j'ai nommé Foch et Pétain*, p. 16.

advice; but he did not at first succeed in doing so. Then, during the whole period when the offensive of the 16th April 1917 was in course of preparation,<sup>86</sup> he attempted, in order to inform himself, to enter into relations with the army commanders over the head of the Commander-in-Chief—a questionable proceeding. The failure of the offensive justified his apprehensions. Under its influence the Cabinet decided to carry out the reform which had been under discussion for the last two months. On the 29th April 1917 the Minister created the post of Chief of the General Staff, attached to his department.<sup>87</sup> General Pétain was the first officer appointed to it; subsequently, when General Pétain took command of the armies, General Foch filled the post.<sup>88</sup> The respective powers of the Chief of the Staff and of the Commander-in-Chief had not been exactly defined: 'hierarchically,' said M. Painlevé,<sup>89</sup> 'the post of Chief of the Staff balanced that of Commander-in-Chief.' But, would it not be, in practice, precisely what the Minister wished it to be? General Foch thought this uncertainty disquieting. The new régime appears, however, to have worked smoothly. The Chief of the General Staff attended more particularly to the relations with the allied armies. 'The war policy pursued from the 15th May to the 13th November 1917,' said M. Painlevé, 'was the policy recommended jointly by Foch and Pétain.'

The practical reaction on this system of the institution of the single interallied command is a matter outside the scope of the present work.<sup>90</sup> From the point of view that concerns us—the legal rela-

<sup>86</sup> Cf. the statements made by M. Ribot, President of the Council, in the Chamber on the 21st March 1917.

<sup>87</sup> According to M. Ribot, *Lettres à un ami*, p. 197, M. Painlevé had thought at the time of appointing General Pétain *Assistant* to the Commander-in-Chief. It was the Council who preferred to appoint him Chief of the General Staff. General Nivelle, it would appear, had given his assent to this arrangement on the 25th April.

<sup>88</sup> This solution had been contemplated by M. Painlevé as early as the 27th April. Cf. *op. cit.*, pp. 83-85. He had looked upon the Nivelle-Pétain arrangement as only transitional.

<sup>89</sup> *Op. cit.*, p. 121.

<sup>90</sup> When General Foch became Commander-in-Chief of the allied armies he vacated in fact the post of Chief of the General Staff, though the appointment was not suppressed (cf. *Journ. Off.*, 28th Dec. 1918, p. 11, 321). The post was not filled, but the offices continued in existence.



tions between the Government and the High Command from 1914 to 1918—the system based on the existence of a Chief of the General Staff was the last that France tried during the war.

Amid these various experiments, which indicate at any rate an attempt on the part of the Government to take really in hand the general conduct of the war, it would be premature to attempt today to grasp the full inwardness of the facts. For the intervention of the civil power in military decisions assumed yet other forms. At critical junctures, for instance at the moment of the German offensive against Verdun, and at the time of the preparation for the offensives of April 1917, great councils of war were assembled, at which the President of the Republic and the President of the Council, assisted by the Minister of War, heard the explanations of the Commander-in-Chief and the opinions of the Generals at the head of army groups. The documents that have been published do not permit as yet of an attempt to describe the form that these relations, which were often of a difficult character, took in practice. The archives of the Historical Service of the army are the depository of these secrets; it may be that all the papers of this kind may not see the light, even when the staff of the army publishes the great collection of documents on which it is now working. Personal recollections, the memoirs of Ministers and Generals, have already furnished, here and there, some fragmentary information, and will continue to do so; but the leaders who had charge of the destinies of France have observed hitherto a discretion and a reserve that are not calculated to inspire much hope in the impatient mind of the historian. The problem is not one of those that historical criticism will be in a position to attack at an early date.

## *II. The organization of the work of government.*<sup>91</sup>

In order that the Government might be in a position to exercise an influence on the conduct of the war—both from a military and an economic standpoint—it had to overcome the internal difficulties inherent in its constitution. The Cabinets comprised ten to fourteen ministers, besides a large number of under-secretaries who attended some of the meetings of the Council. This was too many for

<sup>91</sup> As regards the distribution of the services among the ministerial departments, see above, pp. 73 *et seq.*

action; and yet the members of the Government were overwhelmed with business, so much so that, completely absorbed by the work of their departments, they had no time to consider questions as a whole and meditate. The decisions, hurriedly arrived at, were as unmethodically prepared as their execution was imperfectly supervised. It was accordingly proposed to call to power men who would be free from the cares of directing a department; people talked of 'concentrating authority' in a small number of hands; and they repeated that it was necessary to secure the coherence of the work of government. Each of these ideas in turn had its moment of popularity.

(a) *Ministers without portfolio.* The overwhelming task of the President of the Council was a commonplace before the war. To all the responsibilities of his post, to his duties of direction and control, to his rôle of spokesman of the Government in the Chambers, he added the cares of a Ministerial department—a surprising tradition. It seemed reasonable, therefore, in time of war to depart from this practice. M. Viviani had decided to do so as early as the 3rd August 1914. For the first time in the history of the Third Republic, the head of the Government had no 'portfolio': he was free to devote his whole time to the work of direction. This is one of the innovations of detail introduced into constitutional practice during the war.

It was not a success. M. Viviani's successors, from the 29th October 1915 onwards, reverted, without exception, to the tradition. Nevertheless, theoretical writers on public law, and legislators who concern themselves with doctrine, are generally agreed in approving the reform.

There were practical objections to it. A President of the Council without portfolio is outside the work of the departments; he feels that the ties which unite him to his colleagues are relaxed; he has difficulty in exercising his personal influence, which would be more easily felt if he took charge of one of the vital departments, such as Foreign Affairs or War. Moreover, his political experience warns him of other dangers: the possible independence of some Minister who may follow a personal policy distinct from that of his chief; the prestige of a colleague who may reap the advantage of some enterprise attended by definite results. These were sufficient reasons to prevent others from following M. Viviani's lead.

He had taken another new departure, founded again on the same principles. On the 26th August 1914 he had added a 'Minister without portfolio' to the Government.<sup>92</sup> M. Briand, in forming the Cabinet of the 29th October 1915, had developed this idea by instituting five 'Ministers of State,' who joined the Council without holding any ministerial department. His object was evidently political: to group around him prominent men belonging to all the parties, to personify in some sort the *union sacrée*;<sup>93</sup> but, by reason of their authority and experience, these collaborators, who would have much leisure at their disposal, might seem well marked out for the discussion of 'general conceptions,' which their colleagues had no time to undertake. Was this departure in conformity with constitutional principles? Doubtless not. No law provided for the title of 'Minister of State,' which now appeared for the first time in a decree; the enactments of 1875, moreover, referred to the political responsibility of Ministers 'for their personal acts,' which implies that they have a department to direct.<sup>94</sup> As only a temporary institution was contemplated, which was not in any case to survive the period of war, these objections lost part of their force. But the experiment was short-lived. 'The deliberations of the Cabinet had become more difficult since the number of Ministers and Under-Secretaries had been increased,' wrote M. Ribot; 'the sittings were prolonged beyond reasonable limits without their leading to better decisions.'<sup>95</sup> When the Cabinet was remodeled on the 12th December 1916, M. Briand gave up the Ministers of State. The experiment was resumed by M. Painlevé on the 12th September 1917, but was abandoned two months later.

(b) *The War Committee*. At the end of 1916, when the Chamber was discussing in Secret Committee the interpellation on the general policy of the Government, parliamentary opinion was under the influence of the decisions recently taken by the British Cabinet. In London, the Prime Minister had decided, in order to invest the action of Government with greater force and rapidity, to constitute a limited committee with the duty of seeing to the general conduct of

<sup>92</sup> The Socialist, Jules Guesde.

<sup>93</sup> *Union Sacrée*, agreement among the political groups to suspend party strife in the national emergency. [Translator's note.]

<sup>94</sup> Cf. the *Rapport* of M. Louis Marin, 6th November 1917.

<sup>95</sup> *Lettres à un ami*, Paris, 1924.

the war, while Ministers, under its impulsion, continued to direct the various departments. The system seemed a good one. Why not apply it in France? The Order of the Day voted on the 7th December 1916, after the discussions in the second Secret Committee, invited the Government 'to concentrate the general conduct of the war and the organization of the country in the hands of a restricted directing body.' A few days later M. Briand presented his new Cabinet to the Chamber; he had followed the suggestion contained in the Order of the Day and had set up a 'War Committee.' Externally, the Ministry was composed in the traditional manner, although several departments, hitherto distinct, had been grouped under one head.<sup>96</sup> But, apart from the meetings of the Council of Ministers and of the Cabinet Council,<sup>97</sup> certain Ministers<sup>98</sup> were to assemble to prepare the ground for important decisions. This Committee, said M. Briand, 'will sit, so to speak, permanently, and will frame its resolutions relative to the general conduct of the war after having taken all the necessary technical advice'; a first meeting had taken place on the 16th December. In reality, the power and functions of the Committee had so far not been formulated in any document. It was, however, manifest that this system had the effect of forming two groups in the Ministry, that of the members of the War Committee, who undertook heavy responsibilities in addition to their normal functions, and that of the Ministers 'of the second zone,' as a deputy said.<sup>99</sup>

The Parliament was unsparing of its criticisms of this system, and with some reason. The fact was that the War Committee instituted by M. Briand had only a distant connection with the English plan. In London the members of the War Cabinet had a power of actual decision; they were responsible to Parliament for their policy. In Paris the 'Committee' drafted the decisions, but it got them adopted subsequently by the Council of Ministers, which continued to bear the political responsibility. Mr. Lloyd George gathered about himself, in the War Cabinet, *Ministers without portfolio*, relieved of the minor cares of current business. M. Briand had recourse to collabo-

<sup>96</sup> See above, p. 75.

<sup>97</sup> For this distinction, see above, p. 8. [Translator's note.]

<sup>98</sup> War, Marine, Foreign Affairs, Finance, Armament.

<sup>99</sup> M. Lemire's bill, No. 2750, 7th December 1916. Of these, however, some were to form part of a second committee, presided over by the Minister of Supply, which would deal with economic questions. See above, p. 78.



rators who were already overwhelmed by the duties of their departments. The British War Cabinet was the seat of the real governmental authority, and reduced the Ministers to a subordinate rôle; the French War Committee, in deference to tradition, left to each Minister his constitutional rôle, and acted, so to speak, semiofficially.<sup>100</sup>

When the Painlevé Ministry was formed (12th September 1917), the functions and procedure of the War Committee were defined by a decree and by a ministerial *arrêté*.<sup>101</sup> It was charged with the 'political direction of the war'; it examined, prepared and submitted to the approval of the Council of Ministers *all questions of a general character* concerning the conduct of the war and of a nature *to involve the responsibility of the Government; it took decisions on such other matters* as the President of the Council referred to it, and reported their decisions to the Council of Ministers. Consequently, the Committee now possessed a power of decision in respect of some of the questions that it discussed. It was to meet at least once a week.<sup>102</sup> The final form of the institution was now practically settled,<sup>103</sup> and endured to the end of the war.

(c) *The services attached to the Presidency of the Council.* The Government's power of action, even when concentrated in the hands of a small committee, was not yet fully effective. The President, the head of the Cabinet, had not under him the staff that he needed to examine questions and prepare general decisions; nor did he exercise any systematic control over the execution of the measures contemplated by the Council of Ministers. No doubt it was the business of each Minister, in his particular sphere, to see to this preparatory work and this control. But if it was desired that the Cabinet should really have a head, it was necessary to provide the President of the Council with means of supervising the acts of his colleagues. Other-

<sup>100</sup> Cf. the criticisms of M. L. Dubois and M. Accambray, *Annales de la Chambre, Débats*, 8th February 1917, pp. 315 and 318.

<sup>101</sup> September 14th 1917, *Journ. Off.*, p. 7283.

<sup>102</sup> Under the Painlevé Government, the Ministers of State formed part of it.

<sup>103</sup> The composition of the Committee was modified by M. Clémenceau by decree of the 21st November 1917. Thenceforward it comprised the Ministers of War, Marine, Foreign Affairs, Finance, Blockade, and Armament. The Chiefs of the Staff had a consultative voice.

wise many decisions would be taken and many promises given that would never be carried out, in consequence of the passive resistance of the departments.

It was a deputy, M. Louis Marin, who took the first step toward meeting this difficulty. On the 25th May 1917, he presented a bill proposing the creation of a permanent 'administrative service' attached to the Presidency of the Council. As an investigating and supervising body, this service, which was entirely distinct from the political secretariate, was to undertake in particular the *guidance* of interdepartmental offices and committees, so as to secure unity of views. The author of the proposal would willingly have assigned to it another task, also of a novel character: that of *recording* the decisions taken in Council of Ministers. The Council of Ministers, he said, keeps no minutes; the measures it decides upon are not even recorded in a memorandum prepared by the Council as a whole; the arguments adduced in the course of the discussion leave no trace; a few weeks later the members of the Cabinet may not agree as to the interpretation of their own decisions, for recollections will differ. If the Ministry is changed in the interval, the successors must have recourse to the memory of such among them as formed part of the previous Cabinet. This, he said, is not the way to place the Government's intentions on a firm basis, nor to secure the much needed continuity of policy.<sup>104</sup>

M. Ribot, who was then President of the Council, was not disposed to go as far as this; it was contrary to tradition for the Council of Ministers to keep minutes, and it might prove inconvenient.<sup>105</sup> But he readily adopted the idea of an administrative secretariate, and he shortly organized one.<sup>106</sup>

The idea was developed under subsequent Cabinets. M. Painlevé, by decree of the 13th September 1917, created a Secretariate General to the Presidency of the Council,<sup>107</sup> whose duty it was to collect from the departments the information that the President of the Council required, to follow parliamentary business, and to study the questions of the day, of an administrative or legal character. It

<sup>104</sup> M. Louis Marin's bill, No. 3330 (25th May 1917).

<sup>105</sup> Manuscript memorandum by M. Ribot, quoted by M. P. Dubois, *Revue de Droit public*, 1919, p. 79, note 1.

<sup>106</sup> Under the direction of M. Germain Martin.

<sup>107</sup> Under the direction of M. Emile Borel.

was therefore still an investigating, not a supervising body.<sup>108</sup> But as no special credit had been opened in its favor and as it had no legal existence, it disappeared with the Painlevé Ministry.

It immediately reappeared under another form, for M. Clémenceau attached an Under-Secretary's department to the Presidency of the Council,<sup>109</sup> with the object of securing consistency of action in all questions involving interdepartmental or interallied agreement. This Under-Secretary's department comprised in the first place a section dealing with documentary information,<sup>110</sup> which in a general way inherited the functions of the old Secretariate General; but it also extended over a far wider and very miscellaneous sphere: the secretariate of the War Committee and the Army Control Department formed part of it, as well as the Alsace-Lorraine services. Moreover it performed the functions of an 'interdepartmental office'; that is to say, it might be charged with questions of exceptional importance involving several departments. In theory the Commissaries General<sup>111</sup> were also subordinate to it, though in practice they had the widest independence.<sup>112</sup>

These experiments are certainly of great interest to students of administration and government during the war. In this sphere, as in nearly all others, the idea was slow in seeing the light, and the form given to it was uncertain. For instance, the creation of an administrative service attached to the Presidency of the Council, on the top of already existing secretariates to the War Committee and to the Economic Committee, involved the risk of further complication.<sup>113</sup> It was M. Clémenceau's Government that first attempted to combine these investigating services and bethought itself of attaching the supervising services thereto. But the Under-Secretary's department was a hybrid, in which the functions of the Minister of War and those of the President of the Council were mixed up. When the

<sup>108</sup> Moreover, the War Committee also had its secretariate, which seemed to involve a duplication of the functions of the new office.

<sup>109</sup> M. Jeanneney was appointed head of this department.

<sup>110</sup> Under M. Lichtenberger; this section disappeared in October 1918.

<sup>111</sup> See above, p. 79.

<sup>112</sup> See on this subject the excellent article by M. P. Dubois, quoted above.

<sup>113</sup> Cf. *Lettres sur la réforme gouvernementale*, *Revue de Paris*, 1917, p. 468.

methods of war government came to an end, M. Louis Marin's proposal had not yet been realized in a logical and permanent form.<sup>114</sup>

This rapid sketch is incomplete: it only shows the external aspect of these problems. There is, for instance, the question of the part played by the President of the Republic, and of the influence he exerted: outward testimony agrees that he observed throughout the limits that the constitution sets on his personal action; it is none the less certain that from the beginning of 1915 to the end of 1917 'appeals to the Head of the State' were made on several occasions in grave conjunctures. The constitutional rule remained unimpaired, but it may be that the practice was somewhat modified. This is one among many facts that suggest the inevitable lacunæ in a work such as this, from which political history must be excluded.

Complexity and confusion: such is perhaps the first impression left upon the reader by this rapid description of the public services and government departments during the war. It is certainly true that, in the absence of a preëstablished scheme—which would doubtless have proved unequal to the demands upon it, but would at least have supplied a foundation on which the war régime might have been constructed—the edifice was built without any general plan, by a series of adjustments and additions. It was incomplete when the war came to an end; and perhaps this was inevitable, seeing that the country's requirements were constantly changing.

Nevertheless this organization, which the process of analysis exposes with undue harshness, fulfilled its task. The work effected by the public services was immense, and in many respects remarkable. The defects of method which must be emphasized in a work such as this should not make us lose sight of the achievement.

<sup>114</sup> He revived the proposal after the war.



## CHAPTER IV

### THE GOVERNMENT AND THE PARLIAMENT

THE very circumstances of the war invested the executive, in relation to the legislature, with singular authority. The day was past when the Parliament appeared to exercise a kind of tutelage over the Government. The country looked not to a deliberative assembly, with its interminable discussions, for the decisions and the action that it wanted, but to a group of men of energy. The executive had public opinion behind it.

The first impulse led it to take a large advantage of this liberty. On the 4th August 1914, at the famous sitting when M. Viviani drew the plaudits of the whole Chamber and felt about him the throb of the *union sacrée*, the Government had presented and got adopted, among the urgent bills, a measure authorizing it to open credits by decree during the prorogation of the Chambers. Immediately afterwards, the Parliament had adjourned. Deputies and senators liable for military service had joined their regiments. A manifestation of unanimous confidence added strength to the executive.

But the parliamentary session was not closed. The Chambers might therefore assemble again on the summons of their Presidents. When, at the beginning of September 1914, the serious military situation obliged the Government to transfer the seat of public authority to Bordeaux, the members of the Parliament—not indeed all of them—followed it there. No sooner had they arrived than they learnt, through the press, that the President of the Republic had signed a decree closing the session. This decree, dated the 3rd September, adduced the ‘circumstances,’ the urgent needs ‘more numerous every day,’ the presence with the colors of many members of the Parliament ‘who had neither the wish nor the power to leave the ranks.’ The moment seemed inopportune for giving or demanding explanations. Nevertheless there were deputies who protested against the decree.<sup>1</sup> They encountered, in the office of the President of the Council, the persuasive art of M. Briand, the Keeper of the Seals. From that day until the 22nd December 1914—the gravest period

<sup>1</sup> A legal basis could be found for the protest: it may be argued that the state of siege implies the permanence of the Parliament.

of the war—the executive governed, ‘alone, without the coöperation or the control of the legislature.’ All powers were concentrated in the hands of the Government: it was invested, on its own authority, with a kind of dictatorship. The political life of France was suspended.

But it was not part of the intention of the Government to evade the strict *obligations* imposed by the constitutional rules. It had acted within its rights in issuing the decree of the 3rd September 1914 which closed the session. By those same rights, the Chambers meet, each year, on the second Tuesday in January. The normal session would thus begin on the 12th January 1915. A few days earlier the Government itself took the initiative of assembling the Parliament for a short extraordinary session (the 22nd-23rd December 1914) and of asking it to vote provisional credits for the financial year 1915.

The reassembly of the Chambers at once raised certain questions of parliamentary law and political practice, which were solved in a manner destined, during the war, to give a particular aspect to parliamentary life. A word must be said of the general conditions thus brought about, which persisted until 1918.

1. The permanence of the Chambers was their first feature. Normally, the parliamentary year is divided into an ordinary and an extraordinary session. The Parliament rarely sits for more than eight or nine months. A decree closes the ordinary session, and a decree opens the extraordinary session. The length of the interval accordingly, save in exceptional cases, depends on the Government. Now, in 1915, the Government—the same that had in the preceding autumn rejected the coöperation of the Parliament—waived its right, and issued no decree of prorogation; and this practice continued until the end of the war.<sup>2</sup> The Chambers remained in permanent session, and vacations were at their own discretion. It is true that this exceptional practice was in conformity with certain legal requirements. When a state of siege has been declared, the law, without saying so in terms, appears to imply the uninterrupted presence of the Parliament. But the Government wished above all to show that it no longer distrusted the coöperation of the Chambers; the prospect of a prolonged struggle obliged it to draw on all the resources of the country. For this purpose a whole combination of

<sup>2</sup> And even beyond, until the decree closing the ordinary session of 1920.

legislative measures and of psychological conditions were required, which called for a joint effort on the part of the public powers.

As the Chambers were assembled, did not parliamentary duty take precedence of military duty? The Government had taken the initiative in obtaining furlough for such deputies and senators as were with the colors, for the period of the extraordinary session of the 21st-22nd December 1914. On the 14th January 1915 a deputy, M. Accambray, proposed that the military obligations of members of the Parliament should be suspended by law. This was a logical solution, but sentiment raised objections to it. Should deputies and senators receive exceptional treatment, thereby scandalizing the public? Was it wise to expose the Parliament to the reproach of sheltering its members from danger? The arguments on the one side and the other, which had already been advanced in 1895 and 1906, had lost none of their weight, and Parliament proved as powerless to resolve the problem now as it had been in the past.<sup>3</sup> A singular solution was adopted in practice, though not enacted: deputies and senators were to be able, if they wished, to obtain furlough, in order to take part in parliamentary proceedings; as the Chambers were, theoretically, in permanent session, the members, if they desired it, were thus relieved of all military service; in fact, during most of the time, parliamentary vacations gave them the opportunity of returning to the front. Throughout the war, the majority of the members who had been mobilized occupied a hybrid position: soldiers today, and frequently combatants; tomorrow representatives of the nation, with the duty of making laws and controlling the Government. A bad system, detrimental to discipline.

Finally, as a result of the mobilization and invasion, the rules for recruiting the Parliament were thrown out of gear. The mandate of one of the groups of senators expired in 1915,<sup>4</sup> but it was impossible to carry out elections. Apart from the question of opportuneness, the circumstances did not admit of it. The invasion de-

<sup>3</sup> On the 28th June 1917 in the Senate, M. Fabien-Cesbron proposed, as an amendment, that members of the Parliament should be under the obligation of military service. This proposal was rejected, as had been that of M. Accambray in the opposite sense.

<sup>4</sup> One-third of the Senate is elected every three years.

[Translator's note.]



tached several departments, which could take no part in political activities; and the mobilization made it impossible to assemble the electoral body. Accordingly the elections were adjourned, and the mandate of the retiring batch of senators extended, by the law of the 22nd December 1914. A similar solution had to be adopted, for the same reasons, in respect of the renewal of the municipal councils. In 1918, when the mandate of the deputies expired, there were, indeed, objections and resistance to the application of the same measure. In theory, it was possible to arrange for the troops to vote. But how could the register of electors be revised? How could the vote of prisoners of war be taken? How could freedom of voting be guaranteed? To risk the harmony of the country, by provoking contention, appeared highly injudicious in the circumstances of the moment.<sup>5</sup> But the Parliament thus found itself exercising an authority that the electorate had not conferred upon it; there had been a change in the attitude of the public during the crisis; the parties that had had the majority in 1914, had lost strength. There was no longer the same bond of confidence between the nation and its representatives, and a consequent diminution of the moral authority of the Parliament was to be feared.

In reality this authority had also suffered in other ways. The adversaries of the parliamentary régime had, as early as January 1915, hastened to point out that the session of the Chambers was a source of danger.<sup>6</sup> It threatened a reversion to peace-time habits: the 'spirit of faction' would rule; deputies would be dominated by the wish to displace some Minister, or by the 'instinctive' hankering to overthrow those in power. Parliamentary proceedings, with their delays and indiscretions, were not adapted to the requirements of a state of war, during which, said M. Pugliesi-Conti, 'authority and responsibility ought to be more than ever concentrated and stabilized.' It was therefore the duty of the Government to resist, from the outset, the pressure of Parliament. If it had followed the advice of M. Maurras, the executive would never during the war have 'accounted publicly' to the representatives of the nation; it would at most, of its own free will, have given some information as to its policy, but 'as an act of condescension.'

<sup>5</sup> *Rapport Deyris, Chambre des Députés, No. 4065.*

<sup>6</sup> The campaign was particularly vigorous in August 1915.



In accepting such a rôle, in abdicating its rights, would the Parliament have increased its prestige and earned the gratitude of the country? The mass of the deputies did not think so; on the contrary, it would perhaps have furnished its adversaries with an additional argument, by showing that it was easy to dispense with it.<sup>7</sup> Besides, the Government did not ask it to surrender its prerogatives. M. Viviani, in the first sitting of the session, on the 12th January 1915, stated that he 'fully' accepted the control of the Parliament.

He was not committing himself to much. The *union sacrée*<sup>8</sup> silenced party differences; the necessity of maintaining secrecy as to military preparations obliged senators and deputies, in public sittings,<sup>9</sup> to confine themselves to very general statements. The Government, confronted with questions and criticisms, always had an easy retort: 'How can I act, if you stop me at every step? How can I be responsible for the policy of the country, if I am not to decide as to advisability of replying? Your criticisms are useless and your questions indiscreet. I must have freedom of action. If you won't allow me this, turn me out.' And doubtless it was right, though it sometimes had undue recourse to 'questions of confidence.' The Parliament shrank from provoking a ministerial crisis,<sup>10</sup> which would impair the continuity of French policy: the executive enjoyed a practical advantage, by which it profited—rightly enough—during the greater part of the war.

The representative assemblies, then, adapted themselves to the emergency. But while this is true as a general statement, it must be pointed out that the legislative and budgetary powers of the Parliament, the exercise of its right of supervision, and the judicial function of the Senate, underwent certain modifications of detail.<sup>11</sup>

<sup>7</sup> Cf. the speech by M. Ch. Chaumet, Chamber of Deputies, 11th May 1915.

<sup>8</sup> See note, page 92.

<sup>9</sup> On the work of the Committees, see below, p. 124.

<sup>10</sup> Only one Ministry was turned out during the war by a vote of the Parliament. It was that of M. Painlevé, on the 16th November 1917. The others retired because they felt their authority weakened, but they suffered no adverse vote.

<sup>11</sup> *L'Histoire politique de la Grande Guerre*, published under the direction of M. Aulard, with the coöperation of MM. Ganem and Bouvier (Paris, 1924), furnishes some interesting information on this subject.

*I. The legislative and budgetary powers.*

In normal conditions, the law can be modified only by a vote of the Chambers; and authority to incur expenditure and to collect the taxes is granted yearly by a vote of the Parliament. These essential functions of the legislative assemblies were seriously impaired during the war.

1. By one of the laws voted on the 5th August 1914, the Government was authorized to take, *by decree*, during the war, the measures necessary to regulate the execution of contracts, 'to facilitate the performance or suspend the effect of commercial or civil obligations,' and consequently to institute a moratorium. It thus obtained from the Parliament a delegation of the legislative power, but for a limited purpose. No doubt it could easily, on that day, have obtained far wider powers; this course does not appear to have occurred to it.

But in this sphere, as in every other, when its foresight has proved inadequate, the executive interpreted the law with a certain latitude. It did not hesitate to act as if the Parliament had delegated much wider powers to it. The right of making regulations, vested in the President of the Republic, was one of the instruments that the Cabinet showed itself most ready to employ.

An instance of this is the decree that the Government promulgated on the 27th September 1914, forbidding trade with the enemy, a necessary measure but one contrary to the existing law. On the 7th January 1915 a further decree prohibited the sale of absinth, and the opening of new premises for the consumption of alcoholic liquor. These were excellent measures, but why enact them by decision of the Government, when the Parliament, which was just about to re-assemble, should normally have dealt with them by legislation? Because the Government had reasons for doubting the zeal of deputies and senators in such a matter; it therefore forced their hand, and confronted them with a *fait accompli*. It was again by decree, dated the 9th September 1914, that men exempt from military service, although their exemption was laid down by law, were subjected to a fresh medical examination.

Other acts of the executive, without going directly counter to the law, suspended its application: this was the case with the decree establishing *Cours martiales* in the armies, thus completely altering the régime of military justice; and with the decree of the 9th Sep-

tember 1914, which allowed the Government to dispense with the services of a General Officer, irrespective of the guarantees secured to him by law. Officials too were rendered liable to dismissal without being permitted to invoke their legal rights.

The Government did not fail to affirm that the exigencies of the state of war covered these illegalities, and that it would have failed in its duty if it had not acted as it did: and it was perfectly right.<sup>12</sup> But if its foresight had been sounder and more accurate, it would evidently have done better to obtain, on the outbreak of the war, a power which, at that time, the Parliament would doubtless have been ready enough to grant.

For the system of decrees gave rise to certain difficulties: the decree is only a provisional measure and the Government is obliged to submit it to the Parliament for ratification, which gives it the force of a law. This, in reality, is only a formality. The measure has been adopted and applied, and the Parliament hesitates to reverse it. The first laws ratifying decrees were even adopted without thorough examination; before it condemned the régime of the *Cours martiales* the Chamber had approved them in this way, among a number of other measures. Nevertheless, ratification, from one point of view at least, had a practical interest: a decree cannot impose a legal penalty;<sup>13</sup> if it names a penalty, the Courts are not obliged to enforce it.<sup>14</sup> For this reason alone the Government is bound to obtain legislative approval without long delay.

Moreover, the practice of making *regulations* rather than laws involved the danger of accentuating still further the prevailing complication. Decrees, in lieu of applying a common principle, tend to solve questions as they arise: they embody fragmentary and sometimes inconsistent decisions. The procedure which consists in settling,

<sup>12</sup> Indeed, this freedom of the executive in respect of the law was much wider in other countries, whether as a result of the legislation granting it 'full powers' in the Central Empires, or of the principles of the first *Defense of the Realm Act*. But this régime in France was based neither on law nor on precedent. The Government, at its own risk, usurped the place of the legislature. See on this subject in Eug. Pierre, *op. cit.*, p. 10, the observations of M. Paul Doumer on the 14th January 1915, on the illegality of the decrees.

<sup>13</sup> The decree on trade with the enemy provided no sanctions. The law of the 4th April 1915 imposed them.

<sup>14</sup> The decree of the 7th January 1915 had provided for penalties: the Court of Cassation repealed the judgments enforcing them.



from hand to mouth, difficulties that appear to be disconnected, but are in reality only different aspects of the same general problem, results in a 'tangle of decrees, some of them contradictory, all of them inadequate to the needs of the morrow,' as was pointed out by the *Rapporteur* of the Finance Committee of the Senate.

Yet this system offered the great advantage of rapidity. A law can only be voted after it has been examined in committee, then in public session, in the Chamber and in the Senate. Even if formalities are reduced to a minimum, and agreement is arrived at without difficulty, a long delay is inevitable. When, for instance, it was a question of taking measures in regard to the high cost of living, promptitude was all the more necessary that the persons aimed at by the enactment would have time to take their measures while the bill was going through its stages. Accordingly the laws of the 17th and 20th April 1916 authorized the Government to fix by decree the prices of certain food-stuffs and of coal. In fine, the Parliament, in spite of its theoretical objections, allowed the executive to use its power of regulation freely, either expressly delegating to it authority to do so, for a defined purpose, or tolerating innovations and encroachments and covering them by a ratifying vote.

But at the end of 1916, this question of decrees occasioned an unexpected debate. The Government of M. Briand, which had been remodeled on the 12th December, refused to be satisfied with the latitude hitherto allowed to it by the Parliament, and required what was in effect the complete abdication of the legislature. On the 14th December it laid on the table of the Chamber a bill for which it demanded urgency: 'Until the cessation of hostilities,' said the bill, 'the Government<sup>15</sup> is authorized to take, by decrees adopted in Council of Ministers, all measures, whether by addition or exception to the laws in force, which shall be called for by the defense of the country, *in particular* as regards agricultural and industrial production, the equipment of harbors, transport, food supply, hygiene and public health, the sale and distribution of commodities and produce, and their consumption.' If any of these decrees involved the opening of a credit, application for it should be made within a week. 'To each of these decrees penalties may be attached, not exceeding imprisonment for six months and a fine of 10,000 francs.'

<sup>15</sup> It is curious that this bill made no mention of the President of the Republic, who alone was competent.



This caused great excitement in political circles. On the following day a debate was opened in the Chamber. The President of the Council foresaw a very vigorous opposition, and immediately showed signs of retreat. His proposal, which had not yet been distributed to the members, contained, he said, 'a copyist's error by which the words "in particular" had been allowed to remain, whereas the Government had decided to delete them from the draft which it had before it.' A singular error: in the original text the delegation of authority that the executive was asking for was *general*; in the new text it was limited to a wide but definite sphere.

In defining his proposal, M. Briand pointed out that it was not contrary to constitutional law, seeing that the Parliament when it voted a law habitually left it to the Government to settle various details by decree; the bill simply extended this practice. Nor would the control of the Chambers be impaired, since any deputy might interpellate the Government on each of these decrees. 'If you refuse,' said the President of the Council, 'you run the risk of making the Government's task impossible.' But the Chamber did not seem disposed to give way, particularly in respect of the proposal that the Government should have power, by decree, to define crimes and offenses, and to enact penalties.<sup>16</sup> The President of the Council was indignant, but abandoned his position, and the bill was sent to a special committee for consideration.

The committee made short work of it;<sup>17</sup> the *Rapporteur* had completed his task by the 29th December 1916. 'The Government,' he told his colleagues, 'is asking for a delegation of the legislative power'; how could it justify its demands? The Parliament had left it free, for two years, to issue all the decrees it wished: it had issued only 180; during that time the Chamber had adopted 248 bills, and 45 of these had passed all stages within ten days of submission. The legislative work done had therefore not been inferior in extent to the work of 'regulation,' and the Chamber had shown that it could work quickly. On the other hand, the adoption of the proposal would entail a multitude of dangers. To allow the Government to enact penalties meant a repudiation of the principles of French public law and a return to a confusion of powers. To delegate the legislative

<sup>16</sup> *Annales de la Chambre, Débats*, 13th December 1916, pp. 2678 *et seq.*

<sup>17</sup> The bill was condemned by 23 votes to 2.

power would be an abuse of the electorate's confidence, and a violation of the spirit of the constitution. The political consequences would be even worse. The opponents of the parliamentary régime, said the *Rapporteur*, were conducting a campaign in the country against 'the talkers.' A régime of legislation by decree would be a victory for their views; they would encourage the Government to abuse its powers, and in two months' time a *coup d'état* or a revolution would be the only possible issues.

This is not the place to discuss the *Rapporteur's* arguments. It may be that he overstated the case and his apprehensions. None the less, some eminent jurists have admitted the force of his criticisms. M. Briand's proposal, they say, was unconstitutional. The Chamber had no power to cede its prerogatives; it could only do so by a revision of the constitution.<sup>18</sup>

But in order to satisfy the requirements of the state of war, the legislature was ready enough to modify its standing orders. On the 27th January 1917 the Chamber had adopted a 'special procedure in cases of urgency.' In that event a bill was to be submitted to the appropriate committee on the day after its presentation; the committee had five days in which to discuss it and consider amendments; at the public sitting only the *Rapporteur*, on behalf of the majority of the committee, a speaker selected by the minority, and the movers of amendments that had been rejected in the course of the preliminary proceedings, might be heard. It was no longer possible to improvise new amendments in the course of the discussion. In case of absolute necessity, the Government had even the right of demanding that a bill should be considered and the vote taken within twenty-four hours.<sup>18a</sup>

In spite of the very keen opposition with which it met in parliamentary circles, the 'régime of decrees' had serious arguments behind it. A year after M. Briand's failure, M. Clémenceau's Government in its turn put forward a proposal: it asked to be empowered to regulate or suspend by decree the 'production, transport and sale'

<sup>18</sup> The great majority of the Parliament was certainly unwilling to embark, in the middle of a war, on the procedure of revision. See below, p. 136.

<sup>18a</sup> The special procedure could not be adopted unless the Government made formal demand for it, adducing the needs of national defense. It has been very rarely resorted to.

of produce serving as food for men or animals.<sup>19</sup> This would enable the Government to intervene, not only in questions of food supply, but also in those arising out of the transport crisis and the labor crisis. The demand was not much more modest than that of M. Briand's Government; it differed however in one important feature: the penalties would be defined by law. The proposal thus eluded the criticisms which had brought about the Government's reverse in the previous year, and the Parliament readily adopted it. 'Thanks to the various limitations that I have just pointed out,' said the *Rapporteur* in the Senate, 'the delegation granted by the legislature to the Government will not in reality constitute an abdication.' And yet it was difficult to maintain that ratification amounted to a 'serious measure of control'; for it frequently happened that the original text of the decree had already been remodeled before the expiration of the period fixed by the law! Nevertheless the Chamber, which in the previous year had been so jealous of its rights, voted the Government's bill without any opposition. It became the law of the 10th February 1918, which remained in force 'during the war and for six months after the termination of hostilities.'

2. The powers of the Chambers in the matter of the budget were likewise much modified. But, taken as a whole, the procedure adopted in this connection, after the emergency measures of the first months of the war, indicated a consistent effort to take into account the rights of the Parliament.<sup>20</sup>

It was impossible for the Government to conform, in war-time, to the strict rules normally imposed upon it. Parliament could not be asked to authorize all expenditure in advance, because unforeseen requirements had to be met without delay; nor could the rule that budgetary credits must be applied each to its specific purpose be rigidly enforced. On the other hand, the powers that the Chambers granted to the executive, by one of the laws voted on the 4th August 1914,<sup>21</sup> were far wider than the immediate requirements de-

<sup>19</sup> The decree was to be submitted for ratification within a month. The refusal of this was not to annul acts accomplished in the interval.

<sup>20</sup> See on this subject the work of M. Jèze, *Les Finances de guerre de la France*, Paris, 3 vols. 1915-1923.

<sup>21</sup> M. Jèze has pointed out that the text promulgated was in conformity with that voted by the Chamber, but, owing to a strange mistake, differed

manded. The Government was authorized, in the absence of the Chambers, to open 'supplementary or extraordinary credits' by decrees decided on in Council of Ministers and adopted in Council of State. The necessary 'extraordinary resources' might be created in the same manner.

This was of course a measure peculiar to the state of war and limited to the needs of national defense. In theory it did not abolish all the rights of the Parliament; since it applied only to 'supplementary' expenditure and was valid only while the Chambers were prorogued, it assumed the existence of 'principal' credits, regularly voted by the deputies and senators; the Government therefore could not avoid summoning the Parliament in order to obtain the credits required for the financial year 1915. But, until then, it possessed the widest means of action. From the 5th August to the 22nd December 1914 the credits opened by decree amounted to 6441 millions of francs; the 'extraordinary resources' to which the law alluded took the form of advances by the Bank of France and of short term loans. The Government did not hesitate even to exceed the powers accorded to it: it proceeded, by a decree of the 11th September 1914, to liquidate the 3½ per cent loan, and to remodel the chapters of the *normal* budget for 1914, modifying the classification, and grouping them as it thought fit.

As soon as the Parliament met for the short session of December 1914, it was invited to ratify the action of the Government. The Committees asked for explanations, which were given;<sup>22</sup> but it was impossible to clear up all obscurities, owing to the rearrangement of the headings of the budget. 'The work so laboriously accomplished by the Finance Committee, in pursuit of financial clearness and sincerity, has been, so to speak, wiped out,' wrote the Senate's *Rapporteur* on the budget.<sup>23</sup>

But from the day when the Parliament met in normal session, the powers derived by the Government from the law of the 5th August 1914 came to an end; and the law itself was repealed, without debate, in the autumn of 1915.<sup>24</sup>

from the terms adopted by the Senate. The law was therefore unconstitutional.

<sup>22</sup> *Rapport Métin*, No. 438, 22nd December 1914.

<sup>23</sup> *Rapport*, No. 102, of 1915. (The paragraph is by M. Milliès-Lacroix.)

<sup>24</sup> Vote of the Chamber, 15th October 1915.



The new financial régime, instituted on the 26th December 1914, was destined to subsist, in its essential features, throughout the war. The Government could not prepare estimates for a long time ahead. 'The credits vary with the war itself, and the war is no longer of the same character today that it was six months ago,' said the *Rapporteur* of the Senate's Finance Committee, on the 29th June 1915. Since *all* departments of the Government felt in some degree the repercussion of the war, it was impossible to draw up a budget even for the normal expenditure of the State. Accordingly, on the 26th December 1914, the Government asked the Parliament to vote such credits as appeared necessary for a period of six months. Before long, indeed, this period of six months was found too lengthy for exact estimates: 'provisional' credits, from June 1915 onwards, were voted every three months.

In contrast to the British Government, which had the free disposal of the lump sum of which it had obtained the grant, the French Government, when asking for credits, indicated the purposes to which it intended to apply them.<sup>25</sup> However, this was merely outward form; the proposal certainly contained a distribution by *chapters*, but only as an indication of intentions, and the Government retained the right of modifying the distribution by decree. It was therefore a 'vote of credit' that the Parliament accorded.

As a consequence, Parliamentary control was possible only within narrow limits. In the first instance the *Rapporteurs* of the Senate and Chamber had given up all attempt at it. The first credits were voted without any amendment being proposed in the Chambers and without any examination of the purposes to which they were to be applied. 'The credits will be distributed and employed on the sole responsibility of the Government.'<sup>26</sup> But from June 1915 the committees began to exercise a more active supervision; they examined the applications for credits and commented on them; they obtained a public assurance from the Minister of Finance that he would facilitate the work of control;<sup>27</sup> they discussed with peculiar care the special credits that the Government proposed to apply to the creation of new departments or the enlargement of those already existing; and this work of scrutiny underwent constant improvement in details.

<sup>25</sup> M. Ribot's speech in the Chamber, 24th September 1915.

<sup>26</sup> *Rapport* Aimond, No. 480. Cf. Jèze, I, p. 125.

<sup>27</sup> September 28th 1915.

Whatever may have been the elasticity and practical utility of this system, it had perceptible disadvantages.<sup>28</sup> The vote of credits by instalments gave the Parliament only fragmentary views of the financial situation. The law confined itself to authorizing expenditure, without taking revenue into account. The sense of budgetary equilibrium was thus lost. This procedure tended therefore to warp the Government's financial policy, to encourage excessive expenditure, and to hold back measures of taxation that were indispensable.

At the end of 1917, a new conception took shape: no previous estimate of military expenditure was possible; but expenditure on the civil services, which had now adapted themselves to war conditions, was capable of being foreseen with greater accuracy. It would therefore be necessary to continue to resort, for the first, to the system of 'provisional credits,' but, for the second, it would be possible to draw up an annual budget, balanced by permanent revenue<sup>29</sup> and not by loans. The proposal in this sense presented in the autumn of 1917 was reported to the Chamber of Deputies on the 22nd December. For the first time since the outbreak of the war, the normal procedure was in part observed. But the attempt was not made in time. Fresh 'provisional credits,' under the head of the ordinary civil services budget for the financial year 1918, had to be opened by the Finance Law of the 31st December 1917. It was only on the 27th February 1918 that the discussion of the new budget was begun in the Chamber of Deputies. The proposed budget was voted on the 29th June, so late that a large part of the financial year had already elapsed. The armistice supervened without the financial powers of the Chambers having been exercised in the normal way during any of the war years.

3. The end of the war raised once more, in a new form, the question of the powers of the Parliament in legislative matters. According to the law of the constitution, it rests with the Government to 'negotiate' peace treaties; the representatives of the nation are then called upon to give them legal force by their vote. During the war, M. Briand had promised, if he were in power at the time of the negotiations, to keep

<sup>28</sup> Cf. the criticisms of M. Louis Marin, 22nd December 1917, *Rapport*, No. 4133.

<sup>29</sup> See the report on this point by M. L. Marin, and the general discussion in the Chamber on the 27th February 1918.

in touch with the parliamentary committees. M. Ribot also had stated, on the 8th June 1917, that the executive ought, in his opinion, to communicate to the committees the outcome of the *pourparlers* before they entered on their 'decisive phase.'<sup>30</sup> Would M. Clémenceau's Cabinet, on the contrary, exercise to the full the rights that the constitution conferred on it?

On the 16th January 1919, the President of the Council had alluded to the 'coöperation' of the Parliament with the executive during the negotiations. 'When you have questions to ask,' he said, 'let me know them; get into touch with the plenipotentiary delegates, and if you are not satisfied, raise these questions in the tribune'; but this last step should be resorted to only if it was 'really necessary,' and account should be taken of the Government's convenience, 'because it would also be the convenience of the allies.'<sup>31</sup> The Parliament would accordingly have an opportunity of following the negotiations and would not be confronted with a *fait accompli*. These declarations were not, however, calculated to allay the susceptibilities of the Parliament, since they made no allusion to the committees, in spite of the bill that M. Paul Meunier had just presented.<sup>32</sup> Moreover, on the morrow, in the Budget Committee, M. Clémenceau adopted a very different attitude. 'I shall be very glad to receive suggestions,' he said, 'provided that they are not made to me from the *tribune*.' It was not easy to attach a precise meaning to these contradictory statements.

The Parliament soon complained of being set aside. The Foreign Affairs Committee of the Chambers addressed a somewhat vigorous letter to the President of the Council,<sup>33</sup> but in vain. The Government, said M. Franklin-Bouillon, 'deliberately' rejects the coöperation of the Parliament. On the 26th April, M. Lebey, in an interpellation,

<sup>30</sup> *Rapport Thomson*, No. 3407.

<sup>31</sup> Quoted in the *Rapport Thomson*, No. 5685, p. 6.

<sup>32</sup> No. 5143, 5th November 1918. The deputy proposed the revision of the article of the constitutional law, which, he said, confirmed 'the exclusion of the legislature from the conduct of foreign policy.'

<sup>33</sup> In the debate of the 4th September 1919, M. Sembat subsequently stated that 'about every fortnight' during the peace negotiations, the President of the Budget Committee, M. Péret, had written to the President of the Council to ask for information relative to the financial clauses of the future peace treaty. M. Clémenceau had invariably pleaded Article 8 of the constitutional law (*Chambre, Débats*, 1919, p. 3731).



asked the executive what method it proposed to adopt 'to make the Parliament aware of the conditions of peace.' The answer of the Minister of Foreign Affairs, M. Pichon, dispelled all illusions. The Government, he said, is carrying out the constitution: it rests with the Government to conduct the negotiations; as soon as 'peace preliminaries' have been signed, they will be submitted to the Parliament for ratification. Until then, the Chambers cannot intervene; for this would be 'substituting the Parliament for the executive in the negotiation of treaties.' The President of the Council would only agree to give information to delegates of the parliamentary groups, if they came to him. On this declaration of principle, the Government raised the question of confidence. In spite of the protests of the Socialists and certain Radical-Socialists, the Chamber, by 360 votes to 120, accepted the constitutional rule. Could it, indeed, have done otherwise in the circumstances?

But the criticisms were revived after the event, when the Treaty of Versailles was submitted for the ratification of the Parliament in September 1919. On behalf of the special Committee, the *Rapporteur Général*, M. Barthou, expressed regret that 'the Chamber and the parliamentary committees had been excluded from the preparation of the treaty.'<sup>34</sup> The President of the Council had, he said, doubtless applied the strict letter of the constitution, but had neglected its spirit. This was an injustice, for the parliamentary committees could have kept the secrets confided to it; it was an error, because the Government had deprived itself of an element of strength that might have been useful to it. The President of the Council, in reply, adduced once more the principles of the constitution; this contained articles which precluded the participation of the Parliament. He could not violate the constitution.<sup>35</sup>

The claims of the Chamber were legitimate; the rights of the executive were unquestionable. But to reduce the debate to these terms is to be content with the outward semblance. We may suspect that the parliamentary protests revealed the workings of personal ambition, and that the attitude of the Government was dictated less by a scrupulous respect for the letter of the constitution than by the desire to secure a few weeks of independence. Here, as in the case of

<sup>34</sup> *Chambre, Débats*, 1919, p. 3688.

<sup>35</sup> *Ibid.*, p. 4129, 25th September 1919.



most juridical problems that arise in the course of parliamentary life, political considerations were not without their influence.

## *II. The judicial powers of the Senate: the High Court.*

The constitutional law of the 16th-18th July 1875, which settles the relations of the public powers, gave the Senate, by Article 12, an exceptional judicial power. The high assembly may constitute itself a court of justice in three cases, which the law enumerates as follows:

‘The President of the Republic may be indicted only by the Chamber of Deputies, and may be tried only by the Senate.

‘The Ministers may be indicted by the Chamber of Deputies for crimes committed in the exercise of their functions. In that event they are tried by the Senate.

‘The Senate may be constituted a court of justice by a decree of the President of the Republic, adopted in Council of Ministers, to try any person accused of an attempt against the security of the State.’

But the constitution had not determined the procedure to be followed in the indictment, the preliminary proceedings, and the trial. It had left these matters to be settled by special laws. The Boulanger affair of 1889 had obliged the Chambers hurriedly to settle this procedure, at the moment when the High Court was about to assume its functions for the first time; the arrangements then adopted, under the stress of circumstances, applied only to the case where the Senate was constituted a Court of Justice, by an act of the executive, to take cognizance of an ‘attempt against the security of the State.’ The High Court had never yet, since 1875, been set up to try a member of the executive on a charge of crimes committed ‘in the exercise of his functions.’

It was during the war that the dispositions of the constitutional law in this respect first came to be applied. On the 22nd July 1917, M. Clémenceau made an attack in the Senate on M. Malvy, who had been Minister of the Interior since the 13th June 1914, on the ground of the weakness with which he had dealt with certain ‘defeatist’ circles, and of the favor he had shown to the syndicalists involved in pacifist proceedings. A few days later, on the 31st August 1917, M. Malvy resigned his post under the pressure of a violent press campaign. On the 4th October, the former Minister in his turn in-

terpellated the Painlevé Cabinet, which had shortly before replaced that of M. Ribot. The President of the Council, on his demand, informed the Chambers of the charges made by M. Léon Daudet, the director of the *Action Française*: M. Malvy had communicated to the enemy the plans of the attack at the Chemin des Dames; and he had provoked the mutinous acts that had just occurred in the army! These charges the Government, in a press communiqué issued a few days later, declared to be unfounded. But M. Malvy and his friends of the Radical-Socialist party were not disposed to be satisfied with this official declaration: they wished to obtain a judgment calculated to impress public opinion. To take proceedings against M. Léon Daudet for defamation before the Assize Court, or against the *Action Française* under the law of the 5th August 1914 for the prevention of press indiscretions, would not have answered the purpose. M. Malvy demanded a trial by the High Court. On the 22nd November 1917 he requested the Chamber to indict him before the Senate. 'I entreat you to do this; I ask you for justice. Allow me to be definitely acquitted of this infamy.' The Chamber immediately appointed a special committee of inquiry, which decided a few days later in favor of the indictment of the former Minister before the High Court. The committee made no attempt to form an opinion on the merits of the accusation. It confined itself to documents known to everyone: extracts from the *Journal Officiel*, the text of the allegations made against M. Malvy. The man accused asked to be tried; let him be tried. The Chamber, in spite of the opposition of some of its members,<sup>36</sup> adopted the view of its committee and ordered the indictment. It was a strange situation: those very members who voted for the indictment of M. Malvy thought they were doing him a service; they counted on the Senate to whitewash the accused. The juridical problem that had arisen was immediately distorted by the political atmosphere of the debate.

When the Senate was seized of the Malvy affair, it at last be-thought itself of settling the procedure. The law of 1889, designed to meet the case of an accused sent before the Court of Justice by a decision of the Government, was inapplicable as it stood to circumstances that were quite different. The high assembly might itself decide the principles that it intended to follow in the preliminary pro-

<sup>36</sup> See the speech of M. André Hesse, *Chambre, Débats*, p. 3175. M. Forget defended the attitude of the committee.

ceedings and the trial; but it preferred that these principles should be laid down by a new law and thus assume a general and definitive character. It was no easy matter, however, to settle a question of public law in presence of a *de facto* situation and of certain political conditions—as experience proved.

It would have seemed natural that the Senate should have endeavored to settle the entire procedure for all cases where the High Court should in the future have to judge a Minister or a President of the Republic. The proposal presented by M. Simonet, on the 29th November 1917, invited it to do so.<sup>87</sup> But time was short, and the committee charged with the examination of the proposal gave up the idea of a comprehensive measure. It confined itself to settling the indispensable points: the procedure during the preliminary proceedings and the constitution of the ‘ministère public.’<sup>88</sup> This was the first surrender of its principles.

It was not easy, on this restricted basis, to erect a logical structure. Before the case came before the High Court, a special commission should have carried out a preliminary investigation, and issued an order for trial [*arrêt de renvoi*]. Was it for the Chamber of Deputies to carry out this investigation before deciding on the indictment? Or was it for the Senate to require certain of its members to examine into the grounds of the charge, with the power of stopping the proceedings? Such was the juridical problem. But in fact the question presented itself otherwise. The Chamber had passed judgment; it had indicted M. Malvy before the High Court; and the Senate considered itself *obliged* to try the accused. But as the Chamber had carried out no investigation<sup>89</sup> before its decision, it was arranged that the Senate should hold a ‘supplementary investigation,’ which would lead to a *report* but not to a *decision*. These distinctions and subtleties had a practical and political interest: it would not do that the Malvy affair should be closed by a commission ‘ignoring the bill’ in secret session. The Chamber had refused to give some of its members a power of inquiry; it was equally unwilling that a group of senators, charged with the investigation of

<sup>87</sup> *Sénat, Documents*, 1917, No. 395.

<sup>88</sup> Magistrature attached to the tribunal to demand the execution of the law. [Translator’s note.]

<sup>89</sup> Cf. the *rapport* of M. Perès on the Simonet proposal, *Sénat, Documents*, 1917, No. 399.

the case, should have the power of smothering it. Such was the will of the Parliament. Legislative forms had to be adapted, as well as they could, to the political exigencies of the moment.

The appointment of a *ministère public* to prosecute before the High Court was dealt with in the same spirit. This *ministère public* could not be named by the Government, since it was precisely a member of the executive that was being indicted. It would have been logical to ask the Chamber to name commissioners who would appear before the High Court. But in this particular case it was impossible, since the Chamber had held no investigation and had not even pronounced itself as to the presumption of guilt. To elude the difficulty, the bill devised a special system, which was an innovation in French law: the *ministère public* would be composed of magistrates, irremovable members of the Court of Cassation, selected by the High Court itself, and consequently entirely independent. The Chamber would have the *faculty* of naming commissioners,<sup>40</sup> but what if these commissioners disagreed with the *ministère public*?

The committee endeavored to give the bill a general character. But it could not eliminate the abnormal circumstances in which it was working, and therefore produced a complicated procedure, whose juridical value was very questionable.

For these reasons the proposal met with some opposition when it came to be discussed in the Chamber. But as it met the wishes of M. Malvy's friends and as it made the largest possible allowance for a *de facto* situation created by the Chamber itself, and that without jeopardizing the exercise of its rights for the future, the bill was supported by the Radical-Socialists and the Socialists and was adopted.

This law, dated the 5th January 1918, is one of the modifications of detail introduced during the war into the organization of the public powers in France.

No sooner was the law voted than it proved insufficient. It had omitted to define the *competence* of the High Court. Was the Senate, constituted a Court of Justice, obliged to confine the trial to those facts which had been submitted to it by the Chamber? Or might it,

<sup>40</sup> This was to safeguard the future, for it evidently would not avail itself of this right on the present occasion.



of its own motion, hear accusations that the Chamber had not had in mind? Was it bound to apply to the accused, in respect of a crime defined in the Penal Code, the penalties laid down by the law? Or was it empowered to fix the penalty as it saw fit?

The Malvy case raised all these questions. The High Court did not, after examining the facts, find the charge of treason proved; it was of the opinion that M. Malvy had only been guilty of improper official conduct [*forfaiture*]: that he had abused his powers, by granting subsidies to disreputable persons and to men suspected of treason. Was it empowered to condemn for 'improper official conduct' when the accused was charged with 'treason'? The Penal Code required that such 'improper conduct' should be punished at least by loss of civic rights: could the Senate, acting as a Court of Justice, apply another penalty? The judges hesitated: they were in doubt whether they were bound by the precedents,<sup>41</sup> or whether the Court of Justice was 'sovereign' and could release itself from the rules to which the ordinary tribunals were subject. The judgment of the 6th August 1918 reflects these doubts. It acquitted M. Malvy of *treason* but declared him guilty of 'improper official conduct' [*forfaiture*], although the facts that it adduced did not constitute *crimes* in the proper sense of the term. Instead of inflicting the penalty of civil degradation provided by the law, it pronounced a sentence of five years' banishment. In order to excuse these manifest contradictions, the judgment finally invoked the 'sovereignty' of the High Court.

The jurists found no difficulty in pointing out the inconsistencies in the judgment, but it was not so easy to agree as to its substance. Was the decision of the High Court legal? Some said no and contested the claim to sovereign power. No one can be condemned save for an act contemplated and defined by the law.<sup>42</sup> Others on the contrary maintained that the judgment was in conformity with tradition and precedent,<sup>43</sup> and also with logic. A political tribunal must

<sup>41</sup> The law of 1889 (which dealt with attempts against the security of the State) had laid down that the High Court must confine itself to applying the dispositions of the Penal Code; it had been understood, in theory, that the law of 1889 would be referred to for all details not provided for by the law of the 5th January 1918; but the senators were reluctant to see their freedom of appreciation restricted.

<sup>42</sup> Duguit, *Revue politique et parlementaire*, 1919, pp. 137-145.

<sup>43</sup> Roux, *ibid.* 10th December 1918, p. 267; and 1919, pp. 145 *et seq.*

be in a position to punish the serious errors of a Minister, even if these do not constitute crimes in the eyes of the penal law.<sup>44</sup>

But these discussions are foreign to our subject. It is enough to have mentioned the facts and decisions relating to the organization of the executive, legislative, and judicial powers, and the new features in respect thereof which were introduced during the war into French legislation. This simple narrative teaches us one lesson, which is not without importance. In the midst of political passion, in an atmosphere of party strife, the legislator was called upon to decide a delicate question of public law. He resisted these influences, but they asserted themselves. He claimed to give the character of permanent law to his decisions, and yet the measures that he adopted were hasty and fragmentary, and dominated by the circumstances of the moment. The organization of the High Court, as provided by the law of the 5th January 1918, had the character of a compromise. When this exceptional jurisdiction was seen at work, the public recognized its defects. Constituted a tribunal, the Senate remained, in spite of its endeavors, a political assembly. Did it gain in prestige thereby? The senators had heard M. Clémenceau's attacks on M. Malvy on the 22nd July 1917, and had not dismissed the Minister. The same senators, a year later, became his judges and condemned the man whom they had previously acquitted—a singular proceeding. The press discussed the judgment of the High Court, applauded or criticized it; in the Chamber a deputy, in a report, contested the validity of the decisions. All this was hardly calculated to enhance the authority of the high assembly.

The future of the High Court is today uncertain. The Government in 1923, as a result of the experience of the war and of the post-war period, wished to have the judicial functions of the Senate settled afresh by an organic law. But nothing came of this.<sup>45</sup> It is possible, none the less, that the reform of 1918 may prove only provisional.

<sup>44</sup> The whole question has been discussed by Barthélemy in the *Revue de Droit public*, 1918, pp. 424 *et seq.*

<sup>45</sup> As a consequence of the attitude adopted by the Senate in the proceedings against the Communists (in the Ruhr affair), the Keeper of the Seals, M. Colrat, thought of creating a new jurisdiction to take cognizance of attempts against the security of the State. Cf. *Temps*, 23rd November 1923.

*III. Parliamentary control.*

The Parliament disposes of three ordinary means of exercising its right of control over the action of the Government: (1) the examination of the budget by the Chambers and the special committees, which affords an opportunity of addressing observations to the executive in respect of the execution of the law, of the employment of the credits, and of the working of the departments; (2) interpellation in public session, which is preëminently a political means; (3) the hearing of Ministers by the committees, which serves as a preface to the examination by the latter of bills, or occurs incidentally in the course of their work.<sup>46</sup> The state of war inevitably modified the conditions of this control, for the budgetary power of the Chambers was reduced. The other two procedures remained in theory applicable; but their respective importance was changed, since many matters connected with the war could not be freely discussed. The forms of the Parliament's control were consequently modified, and the new methods adopted deserve particular notice.

1. *The right of interpellation and the Secret Committee.* The control by means of interpellations could not be exercised in a normal way during the war, because the Government was unable to reply in public to all the questions put, and because the Chambers could not dream of questioning, at every moment, the authority of the executive. The Parliament, when it reassembled, appeared disposed to surrender its rights. There was a general agreement that the number of public sittings should be reduced and that the Chambers should concentrate all their energy on the sittings of the committees.<sup>47</sup> While refusing any sort of public discussion, the Government would consent to be subjected to the very vigorous criticism at the secret sittings of the appropriate committees.<sup>48</sup> The public sittings were accordingly limited to two or three a week. But the restrictions that the Chambers had imposed on themselves could not last, and for two reasons. On the one hand, the criticisms addressed to the Government had no sanction behind them: the executive could disregard

<sup>46</sup> Members of Parliament have also the opportunity of exercising an indirect control by means of written questions addressed to the Minister concerned. This practice developed considerably during the war; 6981 questions were put in 1915, very frequently at the instance of the public.

<sup>47</sup> Cf. the speech by M. Viviani in the Chamber, 26th August 1915.

<sup>48</sup> *Commission d'enquête, dite de Briey*, evidence of M. H. Bérenger.



them if it chose, since they could not give rise to a vote of confidence. On the other, the deputies and senators who did not belong to one of the big committees found themselves outside parliamentary activities; they had the painful impression that they were discharging an empty function and felt, as it were, degraded. Accordingly, in spite of the tacit agreement that had at first been observed, the Parliament set about endeavoring to resume the exercise of its rights, adopting for the purpose, if necessary, a new procedure compatible with the state of war.

It was in the course of August 1915 that the first symptoms of discontent were manifested, in connection with the campaign that the Army Committee of the Chamber was conducting against the Minister of War. The time had come, it was urged, to deal frankly, in a thorough discussion, with the whole mass of criticisms that were being leveled at the administration. 'If the work of every committee . . . is to be kept secret . . . from the members of the assembly who do not form part of the committees,' said M. Accambray,<sup>49</sup> 'what becomes, I should like to know, of the control by these committees, which, as you are aware, possess no authority of their own?' 'You must,' said he to his colleagues, 'make up your minds at last to assume your responsibilities, openly, loyally, and courageously; you must use the means of action that the law and the constitution have placed in your hands, and make known your will and pronounce your judgment without ambiguity.' Could their criticisms be made the subject of public discussion? Evidently not. A special procedure had to be devised. 'We require practical, constitutional methods, defined by rules, which shall enable the Assembly to obtain information, without the risk of indiscretions,' said M. Varenne.<sup>50</sup> This procedure had already been suggested by another deputy of the extreme left, M. Brizon, who, on the 12th August, had proposed a secret sitting of the Chambers. The constitution contemplated it, and the rules of the Chamber of Deputies provided for it.

The President of the Council was not, in principle, adverse to the proposal. But the Chamber did not, all at once, decide to adopt this novel procedure. If the discussion in 'Secret Committee' led to the fall of the Government, public opinion would be disturbed, and the adversaries of the Parliament would insinuate that the higher in-

<sup>49</sup> *Chambre, Débats*, 26th August 1915.

<sup>50</sup> *Ibid.*



terests of the country had been sacrificed to lobby intrigues.<sup>51</sup> On two further occasions, the 13th October,<sup>52</sup> and the 15th December 1915, the idea of a Secret Committee was rejected.

But, on the 29th October, the political situation had changed, and the Cabinet of M. Viviani had given place to that of M. Briand. The new Government, when it presented itself before the Parliament, had announced that the Chambers might meet in secret session, provided that they would wait until the executive considered the moment opportune. The events of the spring of 1916, the Verdun affair, pointed to a political crisis. On the 27th May 1916, M. Briand agreed to a meeting in Secret Committee, provided that an express agreement was arrived at between the Government and the parliamentary groups. But the deputies still hesitated, and on the 6th June the majority of the groups found the moment inopportune for a secret session. The Government however again intervened: it considered 'an exchange of explanations indispensable,' 'the hour had come'; it therefore requested the Chamber to prepare precise rules of procedure for the purpose.

The Committee on Procedure, which had been considering the question for the last five months, at once submitted its report. According to this, on the presentation of a demand bearing 100 signatures, the Chamber was to suspend its public sitting and resolve itself into a Secret Committee. The Chamber would be empowered to discuss, in secret session, only the question indicated in the demand. The discussion would continue until the assembly decided by vote to resume the public sitting. It would only be then, after the Secret Committee had terminated, that the debate could result in the vote of an order of the day.

In explaining the principles of this procedure, the *Rapporteur*, M. Louis Marin,<sup>53</sup> did not conceal its difficulties. If a demand signed by 100 members involved *ipso facto* the setting up of a Secret Committee, was it not to be feared that the Opposition would use this as a method of obstruction? Should a record be taken of the discussion, which would fix responsibilities, but make speakers uncomfortable, through fear of future revelations? Should deputies be sworn to se-

<sup>51</sup> *Chambre, Débats*, speech by M. Paul Beauregard.

<sup>52</sup> On this occasion, M. Viviani declared himself *against* the secret committee.

<sup>53</sup> *Rapport*, No. 2108.

crecy, or should a moral pledge be considered sufficient? The Chamber showed no disposition to solve these problems in advance.<sup>54</sup>

The Secret Committee was set up for the first time on the 16th June. The Chamber discussed the military situation, the difficulty in maintaining effectives, and the responsibility of the high command. Various questions were taken up, as one member or another happened to speak. Isolated documents, fragmentary items of information were adduced. Not only the question of the high command, but the Cabinet's authority was at stake, and the latter emerged shaken by the ordeal. After seven meetings, the public session was resumed on the 22nd June, and the order of the day affirmed the determination of the Chamber to set up a control over the services of the War Department in the army zone.<sup>55</sup>

The Government no doubt hoped that the Secret Committee would only exceptionally be resorted to. But that was not the idea of the Socialist opposition. The Chamber might arrange the various problems in groups, said M. Renaudel, and discuss in Secret Committee all the questions dealt with in committees—financial business, armament and effectives, and diplomatic negotiations. Without accepting this view, the Chamber of Deputies was ready enough to adopt a procedure that it found convenient. From the 28th November to the 7th December 1916 it held ten more secret sessions.<sup>56</sup> The Cabinet of M. Briand could not hold out against these interpellations, and the Ministry had to be remodeled (12th December 1916). But in the following weeks the Cabinet was confronted with similar difficulties: on the 26th January and on the 14th March the Chamber again resolved itself into Secret Committee to discuss interpellations relative to Greece and to aviation.

Under the Ribot and Painlevé Cabinets (20th March, 16th No-

<sup>54</sup> The Marin report was not discussed before the meeting of the Secret Committee. In fact, the Committee was set up on the demand of twenty members, confirmed by the vote of the Chamber. As to the procedure, see Eug. Pierre, *op. cit.*, Nos. 799-802. Moreover, a shorthand report was taken: its publication for the Chamber was begun in accordance with a vote of the 10th October 1919.

<sup>55</sup> See below, p. 132. It had been agreed, in the course of the conferences which preceded the Committee, that the Chamber could not vote on fundamental questions during the secret sittings.

<sup>56</sup> The Senate also resolved itself into Secret Committee from the 4th to the 9th July and from the 19th to the 23rd December 1916.

vember 1917), secret sessions continued, in which, for instance, the great offensive of April and the problems of foreign policy were brought up for discussion; and the authority of the Government was not strengthened in consequence.

The public however, became disquieted: it was not forgotten that General Lyautey had questioned<sup>57</sup> the discretion of members of the Parliament; it was thought that certain details of the secret discussions had come to the knowledge of the German Government. Whether these fears were justified or not is immaterial. A blow had been struck at the institution of the Secret Committee, and the Government of M. Clémenceau, with the support of public opinion, had no difficulty in preventing the Parliament from having further recourse to it. When certain deputies, during the peace negotiations, endeavored to raise the question afresh, the President of the Council immediately wrote to one of them: 'I desire to inform you that the Government would be unable to make any statements in the Chamber of which the whole country was not made aware.'<sup>58</sup>

2. *Administrative supervision exercised by the parliamentary committees.* In spite of resort to the Secret Committee, in spite of the increase of interpellations in public sittings during the years 1916 and 1917, there were too many objections to the exercise of control by the Parliament as a whole to admit of its playing the principal part. This accordingly fell, in practice, to the great parliamentary committees.<sup>59</sup>

Were they entitled to assume it? They had been appointed to consider bills, hear the explanations of Ministers, and report. It was over the Minister, the head of the Department, that they exercised their control. Could they consider themselves empowered to extend their activity, to ask for information, to hold inquiries into the

<sup>57</sup> On the 14th March, in the Chamber, the Minister stated, at a public sitting, that he had been unwilling to give, in Secret Committee, certain technical details relative to aviation: 'I feel, with a full sense of responsibility, that even in Secret Committee, it would have meant exposing the defense of the country to certain risks.' (*Annales, Débats*, p. 703.)

<sup>58</sup> April 12th 1919. Cf. E. Pierre, *op. cit.*, p. 1147, note 4.

<sup>59</sup> In particular, those on the Budget, the Army, the Navy, and Foreign Affairs. Some supplementary members were added to the Army Committee of the Chamber, and the practice of appointing it afresh each year was suspended. The Senate, which, before the war, had only one large *permanent* committee, hastened to set up several others.



services, without express legislative authority? They unhesitatingly adopted this course from the beginning of 1915. They 'deliberately' exceeded their normal functions, with the intention of accomplishing the work of control that the Parliament was unable to carry out.

The Budget Committee already had, in pre-war legislation, a legal basis for the exercise of the right of investigation *into the Government services*, and for holding inquiries *on the spot*. The Finance Law of the 23rd August 1876 had formerly authorized it to delegate two of its members to ascertain how credits had been employed, and, as a consequence, to examine the state of equipment in the different departments. It had the right, since 1906, of inspecting army stores. Finally, in virtue of Article 13 of the Finance Law of the 15th July 1914, a sub-committee was empowered 'to follow and supervise continuously the employment of the credits allocated to national defense.' As soon as parliamentary work was resumed, early in 1915, the Budget Committee had accordingly shown its intention of making use of this power of control; in June 1915 it instituted two sections, which were to carry out inspections over the whole country. The Government opposed these proceedings; it attempted to maintain that the dispositions voted in 1876, 1906, and 1914 did not apply to war-time;<sup>60</sup> but it soon gave way, while endeavoring, for a few weeks longer, to resist the practical application of these measures. The Committee on Economies, in virtue of the same principles, also possessed powers of inquiry, which it exercised without impediment but to little advantage.

The Army Committee was quite differently situated.<sup>61</sup> Neither law nor tradition furnished grounds on which it could extend its functions. Yet it showed no hesitation. The President, General Pédoya, made it aware, at its first meetings, of the anxieties felt at the Ministry of War with regard to the state of equipment and munitions. Was it entitled to intervene? Certainly, said the General. Since the Chamber is unable to exercise its right of supervision, through an interpellation, it was natural that the Committee named by the Assembly should act in its place. In a letter addressed on the 13th January 1915 to the Minister of War, he claimed for the Army Committee a

<sup>60</sup> See on this subject the *Rapport* of M. L. Marin on the control set up in 1917, although it is dated 28th October 1915, No. 1387.

<sup>61</sup> Cf. the book by General Pédoya, *La Commission de l'armée pendant la guerre*, Paris, 1920, particularly p. 10.



right of investigation and supervision in military affairs, which, however, would involve no interference in measures connected with the movements or direction of the troops, and would not extend beyond the interior zone.

The Minister raised no objection in principle, but practical facilities were not so easy to obtain. The Committee wished to be enabled to visit arsenals and munition factories, and to be present at artillery experiments: certainly, replied the Minister, but give me warning and let me know beforehand what establishments you wish to inspect. To work under such conditions, retorted the Committee, would be waste of time: to be of any value, inspection must be unexpected. After some opposition, the Government yielded, and on the 20th June 1915 consented to give permanent passes to the members of the Committee, entitling them to enter establishments situated outside the army zone. The free admission of the representatives of the Parliament to the departments of the Ministry was a further source of difficulty: the directors of the central administration complained of being harassed with visits; they had no time to answer requests for information. The Committee insisted and here again had its way.

Amid these difficulties and fumbings, the Committees none the less succeeded in working and in asserting themselves. Delegates of the Budget Committee and of the Army Committee formed an armament subcommittee, which visited munition depots. In Paris, the Committees examined the question of the manufacture of artillery, machine-guns, and rifles, inquired into the needs of the army, and helped to bring private industry into touch with the army administration; they even intervened, in the summer of 1915, to request the formation of positions on which the army might fall back; they dealt with the question of effectives, and asked for information about the Dardanelles expeditionary force. These investigations led to inquiries and suggestions.<sup>62</sup> The Minister of War appeared before the Committee, combated its criticisms, and endeavored to defend his own freedom of action. In August the conflict became extremely lively, even violent. The Committee redoubled its complaints with vigor and passion; and ended by impairing the Minister's authority.

It is evident that this control was imperfect, since it involved no

<sup>62</sup> The Army Committee published in 1919 a whole series of reports on its proceedings during the war. The general report, by M. Dalbiez, is numbered 7259.

*direct* sanction. Such as it was, it constituted a novelty in parliamentary institutions. Nor did the Parliament fail to get it officially confirmed,<sup>63</sup> and above all to extend its scope beyond questions of army administration. It was not until 1917 that it succeeded in formulating two decisions.

The Finance Law of the 30th June 1917 (Art. 7) laid down that 'the *Rapporteurs* of the Finance Committees of the two Chambers are charged with following and supervising, continuously, the *use* made of the credits included in the budgets of the several ministerial departments'; they were to be entitled to demand all information necessary for their task. This was a new principle—the supervision over the whole of the budget, not *after* the close of the financial year, but *while* the expenditure was being incurred. The reform was of a permanent character and was not limited to the period of hostilities; in practice it extended to all departments of the State the rights already possessed by the Budget Committee as regards military equipment and stores.<sup>64</sup>

Moreover, on a proposal by M. Damour, the Chamber of Deputies attempted to organize an administrative control, as a complement of the financial control it had just set up. Committees reported, promises were made, and circulars were signed by Ministers to comply with the wishes of the Parliament. What came of it all? There was an accumulation and confusion of circulars, and the services did not take the trouble to apply them. Members of the Parliament were informed of this by the persons concerned, and made personal applications to the Ministers.<sup>65</sup> Ought not this haphazard procedure to be replaced by some organized and coherent system? On the 2nd October 1917 the Chamber adopted a resolution to the effect that a committee should be set up to 'centralize' complaints of violation of laws, circulars, or regulations, and to take note of the 'failure to carry out measures advocated by the committees and accepted by the Government.'

The activity of the parliamentary committees gave rise, during and after the war, to keen controversy. According to their opponents

<sup>63</sup> This was, for instance, the idea underlying the *Rapport* of M. Revault, in December 1915, on a bill presented by M. Jobert, No. 1546.

<sup>64</sup> Cf. *Rapport* by M. L. Marin quoted above.

<sup>65</sup> *Chambre, Débats*, 27th September 1917.

they did nothing but hamper the work of the departments by their constant interference, harass the Ministers, who had abundance of more urgent business to attend to, and loudly demand measures which the administration was quite capable of adopting without them: in a word, they were open to the same objections in war as in peace. Members of the Parliament, on the other hand, treated these complaints as calumnies. The committees had been quicker than the Government, and even than the command, to understand that the war would be a long one; they had stirred up official inertia, they had combated the prejudices of the technical services, and had suggested solutions of difficulties. Doubtless the Government showed no gratitude and would have preferred to be rid of their restless supervision. And yet it ought to have appreciated the coöperation of the committees, and understood that without them it was at the mercy of its officials.

Between the allegations of the Director of Artillery,<sup>66</sup> and the statements furnished by the committees,<sup>67</sup> historical criticism has as yet no firm ground for judging. One is inclined to think that the influence of the committees was beneficial and greatly helped to instil a war spirit into the old departments. But other documents and a thorough inquiry, of which there is at present no indication, would be needed for a reasoned appreciation.

3. *Supervision at the front.* The question of parliamentary control had another aspect, which, during part of the war, gave rise to violent discussions. Could the right of investigation, which the Government had accepted in principle, be extended to the regions subject to the authority of the Commander-in-Chief, to the army zone? The Army Committee was not disposed to rest satisfied with visits to factories, depots of supplies and stores, and hospitals; it wished to investigate on the spot the provisioning of the army, witness the evacuation of the wounded, and find out their needs from the combatants. It was not only the Minister of War who was involved, but also the command. The problem accordingly was a far more delicate one in the eyes of the Government.

<sup>66</sup> Baquet, *Souvenirs d'un directeur de l'artillerie*, Paris, 1920.

<sup>67</sup> Pédoya, *op. cit.* (for the Committee of the Chamber). In respect of the Army Committee of the Senate, the work of Mermeix, *Au sein des commissions*, Paris, 1924, reproduces many unpublished documents.



The Committee had asserted its claims early in 1915.<sup>68</sup> It pointed out that it was useless to supervise the services of the 'interior,' if it was excluded from the army zone. On the 25th February, the President of the Committee requested the Minister to supply passes which would allow his colleagues to enter the region subject to the authority of the high command. 'That depends on General Joffre . . .,' replied the Minister, 'send me the program of what the Committee wishes to see on the front, and I will submit it to the Commander-in-Chief.' The Committee pointed out, in vain, that General Headquarters granted passes to members of the Municipal Council of Paris and to journalists. These favors are about to cease, retorted the Minister. The army zone 'is not my province,' it is subject to General Joffre 'who refuses to be invaded by civilians.' A permit was granted, however, on the 17th March, to the subcommittee on the Sanitary Service, but only exceptionally.

On the 5th May, the President of the Committee returned to the charge. He wished to visit the Yser front to study the question of asphyxiating gases, which the Germans had just employed for the first time. General Headquarters inquired what was the precise object of this inspection. 'I am not required to give any explanations,' General Pédoya replied. He was threatened with being stopped if he traveled without a pass. He carried out his mission, however, without incident. Thereupon the Committee announced its intention of sending its representatives 'not only about the zone of the interior but about the army zone, wherever it thinks it necessary to ascertain facts.' The Minister immediately protested: 'If the Committee,' he said, 'chooses to give an example of resistance to the orders of the Commander-in-Chief, the Parliament will pass judgment on the claims that you have just communicated to me.' However, under the threat of the Committee's collective resignation, he promised to try to find a way out of the difficulty, in consultation with General Headquarters.

On the 20th June, the Government produced its proposal. The army zone was divided, in fact, into two parts, the *reserve* zone and the *front* zone. The Committee would be empowered to send temporary missions to the first, the duration and itinerary of the mission being fixed. Visits to the other would remain subject to special au-

<sup>68</sup> Pédoya, *op. cit.*, and the report of M. Dalbiez on the work of the Army Committee during the war, No. 7239.



thorization, granted for each particular case. The Committee refused. This time the whole Chamber was roused: on the 26th and 28th July a conference of delegates of the 'groups' decided in favor of a permanent supervision by the Committees, which would delegate their members on temporary missions. In practice, however, the Army Committee did not succeed in obtaining the liberty that it claimed. When, at the instance of Commandant Driant, one of its members, it desired to ascertain the state of the defensive positions in the Verdun region, it was met once more by the refusal of General Headquarters.<sup>69</sup>

The formation of the Briand Cabinet,<sup>70</sup> and above all the attitude of General Galliéni, the Minister of War, brought about a sudden change. 'Your wishes are fully acceded to,' said the Minister to the President of the Army Committee: 'you can go into the army zone whenever you like. You may therefore now consider the question of supervision as definitely settled.' On the 29th January 1916, in the tribune of the Chamber, General Galliéni repeated that he accepted the control, on the sole condition that an arrangement be made with the Commander-in-Chief, 'because military operations take precedence of everything.' The President of the Council, nevertheless, endeavored on that day to avoid an immediate promise. But after the attack on Verdun such postponements were no longer possible. On the 22nd March, after having heard the President of the Council, the Army Committee drew up the program of a series of missions to examine the sanitary conditions of the troops, the railways, and the lines of defense. Very good; the Government would make no difficulty:<sup>71</sup> henceforth there would be a constant supervision, carried out by successive missions, which, however, would not be allowed to establish themselves permanently in the army zone. This agreement was confirmed by an Order of the Day of the 17th May.

It was still necessary to draw up exact regulations to settle how the parliamentary representatives should be designated when on mis-

<sup>69</sup> On these constant difficulties, which irritated the members of the Committee, see, for instance, the narrative of Senator L. Cornet, in the work already quoted.

<sup>70</sup> 29th October 1915.

<sup>71</sup> But it flatly declined to furnish the documents asked for by the Senate's Committee in November 1915, regarding the operations in Artois and Champagne. Cf. *Rapport* of M. Chéron, Mermeix, *op. cit.*, p. 93.

sion, and to fix the limits of their functions. Should the Chamber give a permanent mandate to certain of its members, which would enable them each in turn to undertake missions as occasion arose? Should these members be authorized to demand information, not only in regard to army *services*, but also concerning the result of military operations?

The Chambers considered these questions during the first Secret Committee (18th-22nd June 1916). It was the first time since the 4th August 1914 that the Chamber, as a body, had been called on to discuss the military situation. It now had knowledge; therefore it had responsibility. 'But in that case, since there is a beginning of responsibility, there must simultaneously be a beginning of coöperation and supervision.'<sup>72</sup> It was not enough to exert a distant influence, through the medium of the committees: parliamentary supervision must be organized at the front. Doubtless, according to constitutional theory, the Chamber could not, of its own authority, exercise a *direct* supervision, for this rested with the Government alone; it could not name 'delegates to the armies'; but the Government might *invest* certain deputies with missions of control, on the proposal of the competent committees, who would draw up the program of the inquiries.<sup>73</sup> The President of the Council, while asking the Chambers to avoid a confusion of powers, declared himself ready to accept whatever procedure the Parliament should adopt.

At the close of the Secret Committee, on the 22nd June, the order of the day decided 'to institute and organize a *direct* delegation, which, with the assistance of the Government, should carry out an effective supervision on the spot over all services charged with providing for the needs of the army.'

Such was the decision: its practical application had next to be arranged. The opponents of the Cabinet set to work to give an unexpected scope to the decisions of the Chamber. At the instance, it would seem, of M. Hennessy,<sup>74</sup> the Army Committee drafted a scheme. The members of the Army and Budget Committees were to continue to carry out their usual missions; but *in addition* the Chamber itself

<sup>72</sup> M. Varenne, 21st June 1916, *Débats du premier Comité secret* (*Journal Officiel*, p. 85).

<sup>73</sup> This idea was developed by M. Noulens, *ibid.*, p. 93.

<sup>74</sup> Draft resolution, 30th June 1916, No. 2255. Cf. also the different proposal of MM. Accambray and A. Favre, No. 2241.

was to name a *permanent* delegation of thirty members, who would be invested with the power of supervision at the front. On this basis the *Rapporteur*, M. Tardieu, submitted on the 7th July the heads of a proposal.<sup>75</sup> There was no question, he said, of interfering with the command of the forces. But the high military authorities were too much absorbed by their essential task to attend to stores and services; the charge of these devolved on the civil power. Now the Chamber had a right of control over the Government: its collaboration, which was customary in peace-time, became indispensable in war. The fact was that, for the last two years, this collaboration had not been effective; for want of a 'legal status' and of 'defined rights,' the Committees had been obliged to carry on 'constant negotiations with the executive.' These rights must be established, once for all. No control was possible without direct inquiry into the needs of the army: 'we must go and see on the spot,' was the *Rapporteur's* conclusion. Here the tenor of the scheme becomes manifest. M. Tardieu contemplated control under a double form. On the one hand the committees would continue their work, each in its proper sphere; their control was a 'special' one, since the functions of each committee were limited; it was 'intermittent,' since the supervising members went on mission for a short time and then returned to take their place in the Chamber. The zone of the *rear of the armies*, as well as the interior zone, would be the sphere of the committees. On the other hand, in the *zone of operations*, the parliamentary control would be carried on 'permanently,' by means of a special delegation of the Chamber of Deputies, whose competence would extend to financial questions as well as to the problems of supply, of equipment, or of the medical service. The delegation would periodically present a general report to the Chamber in secret session.<sup>76</sup>

M. Tardieu's project therefore went clearly beyond the terms of the Order of the Day adopted by the Chambers after the Secret Committee, on the 22nd June. The latter contemplated supervision over the services 'charged with providing for the needs of the army': the report extended this control to the zone of operations. The Order of the Day declared that this control would be exercised 'with the assistance of the Government,' there was no question of this in

<sup>75</sup> *Rapport*, No. 2319.

<sup>76</sup> This part of the scheme is set out in the supplementary *Rapport* of the 13th July 1916, No. 2356.



M. Tardieu's scheme. In reality, two constitutional theories were here in conflict. The one, in harmony with parliamentary tradition, delegated to the committees certain of the powers of the Chamber: the other recalled to mind the '*Comité de Salut Public*,' of 1793, and was bound to result in the appropriation by the legislature of part of the functions of the executive.

The Chamber hesitated between the two systems. After a long debate, which lasted from the 18th to the 24th July,<sup>77</sup> it adopted on the 25th M. Tardieu's proposal; it decided to appoint, for three months, a delegation of thirty members, which would exercise a 'general and permanent' supervision in the army zone. On the morrow it was frightened at its own temerity. The proposal came up for second reading; on the 27th a counter-proposal by M. Chaumet again put forward the system of supervision by the committees. With great suddenness the Chamber reversed its decision and adopted the counter-proposal.<sup>78</sup> The supervision was to be carried out, in the zone of operations as in the interior zone, by the members of the great committees. They would investigate 'the preparation of means of defense and offense, whether industrial or military,' without interfering with the conduct of operations. Constitutional tradition thus won the day.

Parliamentary supervision at the front was accordingly organized at the end of July 1916. The long struggle that the committees had carried on since the beginning of 1915 to obtain the recognition of their rights was thus concluded. The regular working of the parliamentary missions was secured by a vote of the Chambers of the 27th July, confirmed on the 2nd August by a unanimous decision of the Army Committee of the Senate.

From now onwards the new régime made good its footing without meeting other obstacles than minor difficulties of interpretation. General Headquarters, of course, took care to limit the powers of the

<sup>77</sup> It is impossible to give sufficient space here to this debate. The most important constitutional argument was put forward on the 21st July by M. Bourély (*Annales, Débats*, p. 1544); he pointed out that the delegates at the front proposed by M. Tardieu would depend directly on the Chamber, 'like the members of the Government,' and would even have a wider *de facto* power than the latter. Would not the executive be placed in a singular and difficult position?

<sup>78</sup> By 269 votes to 200.



delegates; it forbade generals to communicate documents relative to the 'conception and execution of military operations,' for instance, to military works and the establishment of lines of defense; at the time of the disturbances of June 1917, it would not allow the delegates to come and investigate the morale of the army on the spot. At the end of July it laid down a limit, in the area of armies preparing or carrying out an operation, beyond which members of the Parliament should not be allowed to go. These incidents were heard of in the Parliament.<sup>79</sup> M. Painlevé's Government endeavored to settle them in the sense most favorable to the exercise of the control. It began by delivering permanent passes to the delegates; then, on the 29th September, it authorized them to extend their investigations right up to the front trenches, after having communicated their powers to the headquarters of the army. Finally, on the 21st October 1917, it drew up, in consultation with the high command, a circular defining in every detail the rights of the delegates: with their 'control pass,' they could start on mission when they chose, on condition only of *notifying* the Minister of War; they had the right to circulate without being accompanied by an officer; they might inspect on the spot and call for papers, and they might take copies of the documents submitted to them. 'The conception, direction, preparation and execution of military operations' alone remained outside their competence.

After three years of war, supervision at the front was now established on a definite legal footing.

In this study of the government of France during the war, no problems perhaps present greater importance than those of parliamentary control. The phases of its evolution may be distinguished with some clearness. At first the activity of the Parliament took refuge in the committees. These no longer confined themselves to their accustomed rôle and to legislative business: they supervised the action of Government, put questions to it, and in the privacy of their discussions evolved minor interpellations, which, however, lacked the sanction supplied by the vote of confidence. At the same time they obtained a right of supervision over the army services, which the Government endeavored to restrict to the interior zone. Next, from June 1916 onwards, the effort to control and criticize asserted itself.

<sup>79</sup> See the book, already referred to, by General Pédoya, and the resolution proposed by MM. Ferry and Hennessy, 21 Sept. 1917, No. 3779.

Under the impression of the Verdun events and as the outcome of the establishment of secret sessions, the Parliament was able to resume, under a new form, the system of interpellations: in this respect the rôle of the committees tended to dwindle. But, at this very moment, the latter found a new sphere of activity: the supervision which they had been exercising over the services in the interior zone, and which they had had great difficulty in getting admitted in the army zone, was confirmed by the decisions of July 1916. This inspection 'on the spot,' these *direct* relations between the parliamentary committees and the agents of the executive, were doubtless to be found, in an embryonic state, in earlier legislation; but it was the war that favored their practical development.

Between the executive, which—thanks to the working of the budgetary system and the system of decrees—possessed a preponderating authority, and the legislature, which sought to extend to the sphere of departmental action that right of supervision which it could now exercise only to a limited extent over the essential decisions of the Government, relations never reached during the war a state of stable equilibrium. They remained in constant evolution.

But it never occurred to the Parliament to embody these *de facto* changes in any amendment of the constitutional laws. The spirit of the system was transformed, within the very spacious framework of the constitution of 1875; but the enactments that determined the organization of the public powers remained intact. In June 1917 the Chambers had the opportunity of declaring against the principle of constitutional revision. The Chamber of Deputies was at that time seized of several proposals, nearly all of them inspired by the wish to accelerate the work of legislation, so as to bring it into step with the march of military events. Three of these proposals entailed a profound alteration of the organic laws. One suggested that the Senate and Chamber should be combined in a National Assembly until the end of hostilities. 'There is no other means of legislating rapidly in accordance with the constitution than by deciding that the Chambers, in time of war, shall sit together,' said M. Renaudel;<sup>80</sup> in reality the proposal would have resulted in the predominance of the Chamber, which would have constituted three-fifths of the Assembly.<sup>81</sup> The

<sup>80</sup> *Chambre, Débats*, 15th December 1916, p. 2681.

<sup>81</sup> To this reform, M. Forgeot added other proposals on points of detail, such as the abolition of the right of dissolution.

other proposal, that of M. Bonnafous, was quite different. The Parliament was to hold only a short session each month to dispose of urgent legislation; permanent control was to be secured by a 'Parliamentary Committee of National Defense' (composed of 80 deputies and 40 senators), which would not have the power of upsetting the Government. Was one or other of these proposals to be examined?<sup>82</sup> The *Rapporteur* of the Committee, M. Thomson, was opposed to doing so.<sup>83</sup> Both schemes were open to objections: the National Assembly proposed by M. Renaudel would have had more than 900 members; it would have been too large, and incapable of rapid work. The Parliamentary Committee proposed by M. Bonnafous, on the other hand, unduly restricted the control by the Chambers. The very principle of constitutional revision involved dangers. If once begun, who knew where it would stop? Before such a step was taken, there must first be an expression of public opinion; the purpose and limits of the changes must be determined by universal suffrage. In this case the will of the nation was not known. Political experience since the outbreak of war had shown that the traditional system was capable of working. Why then embark on such an adventure? On the 27th July 1917, by 307 votes to 148, the Chamber of Deputies accepted the conclusion of its *Rapporteur* and adjourned the debate *sine die*.

<sup>82</sup> I omit here the proposal of M. Meunier, referred to above, p. 112, note 32.

<sup>83</sup> No. 3407, 14th June 1917.

## CHAPTER V

### THE NEW CONDITIONS

ON the morrow of the armistice, the life of the country resumed its course; it preserved its accustomed framework, which had just given proof of its strength and elasticity. State control gradually disappeared: a decree of the 24th October 1919 fixed that day as the *official* date of the termination of hostilities and thus brought to an end the measures that had been enacted, by law or decree, 'for the period of the war.'

Among the war services, some vanished very quickly, because they were not constituted with a view to continuance in time of peace; the rest were abolished gradually as the 'economic demobilization' of the country proceeded. The departments dealing with fixed prices and requisitions were broken up in virtue of a decree of the 1st July 1919, with the exception of the wheat supply service;<sup>1</sup> the railways were restored to the companies on the 2nd January 1919; freedom of importation brought to an end most of the trade offices and consortiums. At the Ministry of Commerce the cadres of the great war services remained in existence, for the liquidation of business; but most of the time these cadres were empty. At the Ministry of Public Works all the war services<sup>2</sup> were replaced by a Liquidation Office. It is true, on the other hand, that the Finance Department, the administration of war stocks, of the liberated districts, and of pensions, had increased the establishment of their general services. It is true, likewise, that among the services created to meet the needs of war some succeeded in prolonging their existence, those, for instance, dealing with coal, mineral oil, industrial alcohol, and above all with the mercantile marine; most of them disappeared during 1921.<sup>3</sup> Only a few survived, which met the economic requirements of the post-war period, such as the public employment service and the recruiting office for foreign labor, attached to Ministries of Labor and Agriculture.

Are we to infer then that the traces of the war have disappeared

<sup>1</sup> This Service survived until the 1st August 1921.

<sup>2</sup> With the exception of the Coal Office.

<sup>3</sup> Cf. Delemer, *op. cit.*, pp. 52 et seq. "*La démobilisation économique.*"



from the administrative and constitutional organization of France? At first sight they are not very apparent. And yet, if one examines more closely the present conditions of administrative and constitutional life, some survivals will be found. The war has left behind it a certain number of interesting changes, both in legal principles and in daily practice; it has also brought to light certain lacunæ and weak spots in the organization of the public powers; it has given rise to new tendencies, and these have set in movement theories more remarkable for their abundance than their value.

1. *Principles and practices.* French administrative organization underwent, immediately after the peace, modifications of a fundamental but limited character, which were the direct outcome of the war.<sup>4</sup>

Jurists, in their own sphere, lay stress on the success of certain new principles: the legislation relating to war losses, the regulating of pensions, the institution of 'Wards of the Nation,' were roughed out during the war years; they received their final shape on the morrow of the armistice. The idea that the whole nation had a duty in common toward the victims of the war passed, for the first time, into law. Before 1914 this idea was still disputed. In 1871 the Government had confined itself to granting assistance to those who had suffered losses. Jurisprudence, however, was inclined to admit the partial responsibility of the State in respect of the risks inherent in organized social life, and the law of the 16th April 1914 had adopted this principle in applying it to damage caused by civil commotion. After the invasion it was thought just that the burden of the losses incurred should be spread over the whole population.

Attention should also be drawn to the influence exercised by the events of the war on the jurisprudence of the administrative tribunals. The Council of State was found invoking the theory of 'lack of prevision' as a ground for admitting the nullity of certain contracts; municipalities were obliged to revise contracts that they had made with transport contractors, and with gas or electricity companies. There was a constant increase of appeals to the supreme administrative tribunal with a view to obtaining the cancellation of de-

<sup>4</sup> These questions have been dealt with by M. Jacquelin, at the Faculty of Law, with great precision. The information here given is drawn in part from his discussion of the subject.

cisions irregularly taken by agents of the executive on the ground of excess of their powers. These were inconspicuous innovations, of little interest to the public, but which may nevertheless be of real importance for the future of French administrative institutions.

The organization of the public services that govern economic life underwent changes of a deeper character. The financial position of the railway companies had been shaken by the state of war: rolling-stock had to be renewed and the permanent way repaired, at the very time when receipts had been reduced by the crisis, and expenditure increased by the rise of wages and the introduction of the eight hour day. In 1920 every railway line showed a heavy deficit. The conclusion was arrived at that palliatives would not meet the case and that the system must be totally recast. The law of the 29th October 1921 introduced the new régime. The lines now have a common board of directors, and are under the guidance of a Superior Railway Council; their financial solidarity has been brought about by the institution of a common fund, destined, in theory, to enable their expenditure and receipts to be balanced, and, in fact, supported in the first place by advances from the public treasury. In order to stimulate the efforts of the companies and of their staff, the law provides for a complicated system of premiums on good management, based on the development of traffic and economy of expenditure.

The system of mining concessions has been remodeled. Until the eve of the war, the grant of concessions, by decree adopted in Council of State, was gratuitous; concession-holders were required merely to pay the royalties, the rate of which had been progressively increased. Since the law of the 9th September 1919, concessions have become temporary; at the end of the concession the land, buildings, and machinery will revert to the State; in addition to the traditional royalties, the State now requires a share in the profits: this is a new and wider conception of the rights of the community. In reality the Government, during the last twenty years, had already begun the partial introduction of this system. It was not the state of war that gave birth to the idea of reform; but it was the state of war that familiarized public opinion, in spite of the opposition, with the conception of the nationalization of public services, a conception that lies at the root of the new mining law.

Lastly, the war had a more direct influence in organizing the general employment of waterfalls and hydraulic power. It imposed a

solution' of this question.<sup>5</sup> The utilization of water-power had long been hampered by the law. A manufacturer, in order to be able to make use of a waterfall, had to acquire possession of both banks; speculators would hasten to purchase a few yards of land near a fall, in order to sell them again, at an exorbitant price, to the manufacturer who wished to utilize the fall. The prevention of these abuses was discussed, and many proposals were made with that object. The war and the fuel crisis supervened, making the problem an urgent one. The Finance Law of the 28th September 1916 solved it provisionally. On the morrow of the peace, the law of the 26th October 1919 set up a new régime. In order to utilize a waterfall, the manufacturer must obtain an administrative permit; if he gets it he simultaneously acquires the right of putting up his factory, and of expropriating the riparian owners if necessary; in return for these advantages, he pays the State a royalty. The system governing the utilization of water-power was directly based on that governing the exploitation of mines.

All this legislation thus rested on new principles. It was a kind of compromise between the idea of State monopoly and the opposite tendency, which would withdraw public services from State control. In fact, in the sphere of transport, of hydraulic power, and of mines, the war had shown that it was impossible to avoid closer control by the administration. An endeavor was made, in the solutions adopted, to organize this control, and to set up the coöperation of private capital with the State. The ideas applied in 1919 and 1920 are to be found in embryo in the report drawn up by the Minister of Public Works, M. Claveille, on the 8th September 1917, at the worst moment of the economic crisis.

The reactions of the war on the principles of French administration may be observed in yet another sphere, that of administrative jurisdiction. There was a tendency for the rôle of the Council of State<sup>6</sup> to develop, and that body was no longer able to cope with its duties; it was overwhelmed by the growing multitude of public authorities, all the more that the events of the war had infinitely multiplied the number of contentious questions. The legislator had en-

<sup>5</sup> See the information given on this subject by M. Berthélemy, *Traité de droit administratif*, Paris, 1923, p. 511.

<sup>6</sup> See footnote, p. 141.



deavored to meet the evil<sup>7</sup> by an internal reorganization of the sections of the Council, but this was only a palliative; in particular a system of jurisdictions was inaugurated, alongside of the ordinary administrative tribunals, to deal with the litigious business of given administrative services: difficulties arising out of the application of the law on war profits, of the law on pensions, and of the law on war losses, were brought before special commissions. The Council of State thus tended to become, in a large number of cases, a sort of administrative 'Court of Cassation.' This tendency would be favored by certain proposals for the creation of administrative tribunals in the various districts, which would deal with a large proportion of the suits.<sup>8</sup> It would also harmonize with another idea, which, since the war, has found many supporters: *viz.*, that the time has come to develop the part of 'adviser of the government' which the Council of State ought to fill. It already defines the intentions of the legislator by drafting the administrative regulations that determine the mode of application of the law; it might even more usefully coöperate in the preparation of bills, and might perhaps thus prevent those ambiguities of drafting, those lacunæ, and those occasional inconsistencies, from which the public at present suffers.<sup>9</sup>

Finally, the grouping of economic associations in the several districts was likewise the outcome of experiments conducted during the war. The system of federations of Chambers of Commerce, as it was laid down in 1919,<sup>10</sup> prolonged the existence of the consultative economic committees instituted in 1915 in the military districts, and was directly connected with the investigations carried on, and the efforts made, since 1917, to form 'economic regions.' This is a first success to the credit of the advocates of regional organization; it is confined

<sup>7</sup> See the article by M. Laferrière, in the *Revue de Droit public*, 1920, pp. 553 *et seq.*, and 1921, pp. 109 *et seq.*

<sup>8</sup> The law of the 1st March 1923, which reorganized the section of the Council of State dealing with litigious business did not affect the general organization of the administrative jurisdictions or their relative competence. It does not yet therefore carry out the above mentioned proposals. Cf. A. Guillois, *Revue de Droit public*, Jan. 1923, pp. 84 *et seq.*

<sup>9</sup> The organization of administrative jurisdiction in Alsace-Lorraine constitutes yet another innovation of detail resulting from the war.

<sup>10</sup> Ministerial *arrêtés* of the 5th and 12th April and 18th August 1919. I have not dwelt on these questions, which have been thoroughly discussed in M. Hauser's work.



for the present to the economic sphere, but it may be the preface of a wider administrative reform, which would affect the very principles of the political system.

It would be possible to carry this enumeration further;<sup>11</sup> but I do not think that more examples are required to bring out the kind of influence exerted by the war on the development of French administrative law.

The great organic laws that dominate the constitutional and governmental régime remain intact. The sphere of public law, even more than that of administrative law, resumed its normal aspect when the war came to an end. In order to appreciate the consequences of the war in this sphere, it is not sufficient to observe, from a comparison of the conditions in 1919 with those which prevailed in 1914, that the war, in respect of certain problems, accelerated a process of revolution that had already begun.<sup>12</sup> This is too natural a result to occasion surprise. The question is whether the emergency gave rise to *new* ideas, which have already been translated into decisions and enactments.

Such reforms are few. The measures taken by the executive during the war to organize the work of government have not survived. The secretariate of the Presidency of the Council, for instance, has disappeared, although its usefulness in theory was not contested. There has been no change in the relations of the executive, the legislature, and the judicature. Ministries are not more stable, legislative work is not better organized, the powers of the President of the Republic are not enlarged.<sup>13</sup> The reforms deal with points of detail.

The maximum number of ministries, for instance, has been fixed. Before the war the President of the Council, when he formed his Cabinet, was free to extend as he chose the number of his colleagues.

<sup>11</sup> *E.g.*, as regards the agricultural offices in the departments, and the development of technical schools, which are both of them the outcome of war experience.

<sup>12</sup> The régime of public liberties, for instance, has been modified (law of the 12th April 1920 on the extension of the civil rights of trade unions); but this reform had many advocates before the war. Similarly the remodeling, in 1919, of the system of elections to the legislature is directly connected with numerous pre-war discussions.

<sup>13</sup> Cf. Ch. Seignobos, *Les effets politiques et sociaux de la guerre*, in *Histoire de France contemporaine*, IX, *la Grande Guerre*, pp. 496 et seq.

In 1916 and 1917, each change of government was accompanied by a remodeling of the ministerial departments, a matter that gave rise to much criticism in the Parliament.<sup>14</sup> The proposals made at that time were revived after the peace; and it was decided in July 1920 that no new Ministry should be created without prior legislation.<sup>15</sup>

The methods of financial and administrative control by the parliamentary committees have been improved. The great committees are still enjoying the practical advantages that the war had enabled them to secure. Their supervision over the execution of the budget, and over the departments, is now established by decisions of principle.

The relations of the executive with the high military command have undergone no important alteration, at least in their general features. When, in January 1920, the Minister of War submitted for the signature of the President of the Republic the decree reorganizing the *Superior Council of War* and the *General Staff of the Army*,<sup>16</sup> he was very careful to bring out the connection between his proposal and the decrees of 1911 and 1912. The Superior Council, composed of the Marshals of France, of twelve Generals of Division, and of the Chief of the Naval Staff, meets under the Presidency of the Minister of War or the President of the Republic; it is consulted on all matters relating to the general organization of the army and the preparation for war—plan of concentration, new armament, or main lines of the scheme of mobilization. Its vice-president, the Inspector-General of the army in time of peace, is Commander-in-Chief designate of the French armies in case of mobilization. He is assisted by a chief of the General Staff of the army, who follows the Commander-in-Chief as his assistant in the field. One of the Assistant Chiefs of the General Staff assumes, in case of war, the title of Chief of the General Staff of the army and remains with the Government. Moreover, the *Superior Council of National Defense*, that is to say, the interdepartmental committee comprising the President of the Council and the Ministers of War, Marine, Colonies,

<sup>14</sup> See above, p. 77.

<sup>15</sup> Finance Law of the 20th July 1920, Art. 8. But this decision has not been strictly observed. Cf. A. Guillois, *Revue de Droit public*, 1924, pp. 638-644.

<sup>16</sup> Decree of the 13th January 1920, explanatory statement, *Journal Officiel*, p. 1300.

Foreign Affairs, Finance, and the Interior, was revived in June 1921.

All these arrangements recall no doubt those set up by the decrees of 1912 and 1913.<sup>17</sup> And yet the differences are perhaps not as slight as might appear at first sight. The Commander-in-Chief designate is to assume the command of the *whole* of the troops in the field, and not only of the principal group of armies. The unity of command is thus realized in principle. This is more than pre-war legislation had achieved. Experience had, moreover, shown the importance of methodical preparation for an industrial and economic mobilization: to-day the Superior Council of National Defense has reorganized its permanent secretariate, whose duty it is to study these problems, to draw up reports, and to secure a continuity of effort. An investigating section has been added to it, to deal with aeronautical questions. An attempt has been made to invigorate this great organism, which was so lethargic before the war.

The whole practical reaction of the war on the organization of the public powers is contained in nice differences of this kind.<sup>18</sup> And yet, if France had to go through such another crisis, would the legislative work by which her life was adapted to war conditions have to be done over again? The answer is that it would. The exceptional measures adopted during the emergency were, in general, valid only for the period of this war. Hardly any exceptions to this rule can be discovered between 1914 and 1918. The municipal law of 1884 underwent in 1915 an alteration of detail<sup>19</sup> which would come again into force in the event of a fresh war. But the system of public liberties, for instance, was not dealt with by any general law. If war broke out tomorrow, the Government would find in the legislation no powers other than it possessed in 1914.

## 2. *Tendencies and proposals.* If the ordeal of the war has left be-

<sup>17</sup> See page 16, note 15.

<sup>18</sup> The régime of courts-martial gave rise to keen criticism after the war. A committee was appointed on the 16th June 1921 to consider a reform of the code of military justice.

<sup>19</sup> Law of the 12th June 1915. It decided that the mobilized members of the Municipal Council were no longer to be reckoned for the purpose of the quorum; but that if the Council is reduced to a third of its members, the approval (tacit at least) of the prefect is necessary to render *any* of its decisions valid.

hind it only changes of detail, it has had another result of greater importance: it has given rise to criticism and reflection. A movement of reaction, which claims to be founded on the experience of the crisis, is developing against the established principles and customs. 'I was aware that the machinery of government was ill designed and ill constituted,' wrote a former Minister in 1917,<sup>20</sup> 'but it required a war—and a war such as this—to bring home to me the dangers of this faulty working and this inadequacy of output.' 'Administrative reform' is in fashion, and 'constitutional reform' finds advocates. One after another, comprehensive schemes have seen the light, designed to rejuvenate French institutions.<sup>21</sup>

The syndicalists wish to construct on new foundations.<sup>22</sup> During the war, they say, the State was obliged to coördinate and organize private enterprise. Individualism is antiquated; but the indefinite extension of a bureaucratic régime is equally out of date. A new rule dominates the life of the State, according to which 'those who are interested and specially qualified should be closely associated in the management of public affairs.' This principle was indeed recognized in the explanatory memorandum prefixed to a war decree, that of the 29th January 1918. And where are these interested and specially qualified persons to be found? In the Trades Unions. It is no longer a question of appointing 'consultative committees,' such as those through which the State pretended to consult a few experts, who purported to represent the workers or the managers of undertakings, but who were not intimately connected with the life of the country. The strength of trade associations must develop freely, it must dominate the State, and direct it. When the citizens shall all have been enrolled 'in associations corresponding with their ideas, their interests, or their qualifications'—economic groups, associations of officials or of those under their authority, coöperative societies of consumers—then, in the words of M. Maxime Leroy, the

<sup>20</sup> *Lettres sur la réforme gouvernementale, Revue de Paris*, December 1917, pp. 449 et seq.

<sup>21</sup> To the extent that these schemes deal with economic problems, the articles by C. Bloch, "The Literature of Economic Reconstruction in France," in the *Manchester Guardian Supplement* on the Reconstruction of Europe, 4th January 1923, furnish an excellent bibliography.

<sup>22</sup> M. Leroy, *Pour gouverner*, Paris, 1918, and R. Francq, *Le travail au pouvoir*, Paris, 1920.



State will be no more than the 'general secretariate of the various interests, grouped according to their special economic, technical, or psychological characteristics.'

To discuss the powers of the President of the Republic or the organization of legislative work is, in these conditions, mere waste of time. And the syndicalists set about building up a complete program of 'administrative reconstruction within the economic scheme.' The parliamentary system is condemned. The Soviet would be no better. The true solution is in the transfer of public administration to the producers. The Chambers of Commerce, the syndicates of workmen and employers, methodically grouped, will settle the lines of the policy of production. And M. Roger Francq conceives, above the regional councils, a National Assembly, elected on a professional basis, which would exercise the legislative power.

As for the executive, it must be freed from political influence. Ministers must be experts, qualified men, selected outside the legislative assembly. At most, some partisans of the scheme would admit the joint responsibility of the Ministers to the representatives of the nation, but only when some action of the Government of a general character is challenged in debate.

Alongside of these very spacious theories, other proposals are heard of, aiming only at remodeling the democratic régime by constitutional changes.

The group of the 'New Democracy' is frankly hostile to the parliamentarians. 'The great problems that dominate today the life of nations are those relating to the development of agriculture, industry and commerce. As this task is unsuited to professional talkers, the course of events tends toward the elimination of the politician.'<sup>23</sup> The President of the Republic should be elected not only by the Chambers but by the members of the general councils: he would thus be more independent of the Parliament. He alone would have the initiative in legislation; he alone would appoint Ministers, selecting them outside the Chambers. The representatives of the nation should not govern, but confine themselves to a sort of control over the direction of the country's policy. In the event of a conflict between the President and the Parliament, the Chambers would be dissolved and the electorate would pronounce judgment. In order that the

<sup>23</sup> Demain, *Profession de foi de la Démocratie nouvelle*, Paris, 1918.

executive should not be tempted to exceed its powers, a Supreme Court would see that the constitutional laws were observed, and annul, if necessary, the acts of the Government.

This plan, borrowing as it does from English and American political experience, shows no features of great originality. The proposals of M. Corr  ard are more interesting and more thorough, but, on the whole, the principles on which they are based are not very different. The political defect of France today, in his view, is the confusion of powers and functions. The functions of direction, execution, and control tend to coalesce. The Parliament has extended the exercise of its right of supervision to the point of encroaching upon the sphere of the executive departments. Reform must first be directed to a clear distribution of the public powers.

The legislative power, under his scheme, would be constituted by two Chambers; but the committees, which are an element of disturbance and intrigue, would be abolished; only a drafting committee, for settling the terms of legislative measures, would survive. To avoid confusion in debate, members should not be allowed to propose amendments in public sittings.

The President of the Republic would have the same powers as under the American Constitution; he would appoint his Ministers and be responsible to the Parliament; the right of interpellation would continue to be the usual method of parliamentary control, but it would only be permitted on the occasion of votes of credit; outbursts of parliamentary opinion would thus have time to quiet down.

Between the executive and the legislature, the 'Supreme Court' would secure the working of constitutional liberty. The public departments, under this system, would also be organized in the light of war experience: the personnel would co  operate in the management of the service; a Secretariate General would be created to co-ordinate the action of the several departments; regional councils would be formed, endowed with wide administrative functions and exempt from rigorous control.

The proposals of M. Henri Chardon<sup>24</sup> are animated by a quite different spirit. He has no mistrust of parliamentary control; he recognizes the valuable services rendered by the committees of the

<sup>24</sup> *Le nombre et l'  lite*, Paris, 1921.

Chamber and Senate during the war; and he does not think it necessary to protect Ministers from the encroachments of the legislature. The organization of the executive requires only amendments of detail: a President of the Council without portfolio, free to devote himself to general questions; a permanent administrative secretariate like that proposed by M. Louis Marin; a Council of Ministers whose decisions would be the result of previous preparation and would be recorded. The Parliament would retain its budgetary functions and its duty of supervision; but it would be advisable to recruit the two Chambers differently, the one by universal suffrage, the other so that it should represent 'professional interests'; if the 'professional' Chamber alone had the right of initiating legislation, this would suffice to reduce the multiplicity of new laws. No doubt the present relations between the public powers would remain unaltered; the preponderance of the legislature over the executive would continue; and the instability of Governments would be the same as in the past. But M. Chardon has devised two remedies. In each of the great departments, the Directors, heads of services, would have an important position; they would sign decrees, appoint their staff, and be 'responsible for everything.' The Minister would no longer act; his task would be merely one of supervision; he would be the representative of the Parliament at the head of the department: what matter if he were frequently changed? The Council of State would be the keystone of the structure of government; it would examine the budget and give its opinion on bills before they came to the legislature.

Amendments of a still more modest character were put forward in 1917, in the *Revue de Paris*, by an eminent politician.<sup>25</sup> The war had revealed certain errors of method; a few practical changes of procedure would suffice to remedy these. The constitution need not be touched.

In all these plans of reform, in spite of serious divergencies, there appear to be certain fundamental ideas in common. Among these is the importance of the Council of State. The need is keenly felt of basing the action of the public powers on an advisory body, capable both of giving an independent opinion on the text of legislative meas-

<sup>25</sup> Under the title *Lettres sur la réforme gouvernementale*, December 1917 and January 1918. M. Léon Blum has been said to be the author.

ures, and of acting as arbitrator between the principal constituents in the machinery of government. All are agreed likewise that the public services should be made, in a measure, really independent of the Parliament, either by an increase of the authority of the directors of government departments, or by a diminution of the Minister's responsibility to the Parliament. The need is recognized of securing the continuity and the stability of governmental action by the institution of a permanent secretariate, and by the personal influence of a chief—a President of the Council without portfolio, or a responsible President of the Republic: public opinion calls for this stability, perhaps because it has become aware of the importance of questions of *foreign* policy.

But, with these ideas in common, the proposals differ materially. Is this ideal to be reached by practical measures, within the framework of the old-established institutions, or is it to be sought at the cost of a revision of the constitution?

The highest magistrate of France had taken up a position in the matter. At the moment of his election in 1920, M. Millerand had declared himself in favor of revision of the constitution; he had affirmed his view even more prominently in his speech of the 14th October 1923.<sup>26</sup> We must put an end, he said, to the instability of Governments, which makes any continuity of policy or administration impossible. The executive is powerless in face of the Parliament, which dominates it. In normal conditions, the objections to this régime may not be too serious; today conditions are not normal. Legislative assemblies will not vote reforms of taxation which are likely to render them unpopular, unless they are solicited by a strong Government. And how can this happen, since it is to the Government's interest to refrain? How could the Government attempt it since it is dependent on Assembly? The executive must therefore be given more authority and independence. And for this purpose, said M. Millerand, the powers of the President of the Republic must be enlarged. The President must be in a position to dissolve the Parliament without asking the assent of the Senate; he must hold his mandate not only from the National Assembly, but also from the delegates of the general councils, from the representatives of the great associations representing employers, workers, and

<sup>26</sup> Cf. also R. Recouly. *Une visite au président Millerand*, *Revue de France*, 1923, pp. 225-238.



the intellectual professions.<sup>27</sup> If the members of the Parliament upset the Government, they will run the risk of being summoned before the electorate by a decree of dissolution: and they will think twice about it. In certain respects this program recalled the American system, in others the British system.

But the tendencies revealed by the elections of the 11th May 1924 checked the schemes of the 'revisionists.' The new ideas that sought to found programs of extensive reforms on the experience of the great war have been confined to a narrow circle; they do not appear as yet to have made an appreciable impression on the mass of public opinion.

<sup>27</sup> His proposal also provided for the representation in the Senate of the great professional associations.

## CONCLUSION

THE war administration and war government of France showed no violent departure from the principles on which the political life of the country reposed. It was not a complete system suddenly introduced, like some foreign body, into the political organization; nor does it lend itself to separate examination, in the abstract, because it was bound up with all the past and because the *principles* of the constitution were never lost sight of. This is perhaps the most marked feature of public life during the crisis.

1. At first, however, the constitutional régime was suspended. From the 4th August to the 22nd December 1914, France lived, in practice, under a dictatorship, exempt from all parliamentary control.

The legislature of its own accord abdicated the essence of its rights, by granting power to the Government to open credits by decree; it delegated a part of its functions to the executive, by authorizing it to modify the performance of contracts and to establish a moratorium: it confirmed, without limit of time, the exceptional powers of the executive accruing to it from the régime of the state of seige. And then the Parliament disappeared from the scene. The Government did not rest content with these advantages: it interpreted and developed them as it chose. It was the Government that organized the preventive censorship, that altered the jurisdiction of courts-martial and set up the *Cours martiales*, and that multiplied the restrictions on personal liberty. On its own authority it impaired freedom of commerce and the guarantees enjoyed by officials. The prorogation of the Chambers early in September led to the rapid development of legislation by decree. During these few months all the urgent measures called for by the state of war were adopted by the executive alone, without the remotest exercise of the sovereignty of the nation. And this executive, for a time, itself surrendered a portion of its prerogatives to the head of the armies; from the last days of August until the first days of October 1914, the civil power allowed itself to be eclipsed by the military power. While at Bordeaux, the Ministers more than ever gave up the attempt to follow operations at the front; they were no longer even in a position to provide for the needs of the army. General Head-

quarters exercised sovereign control over the forces at its disposal. It enjoyed a total, but temporary, independence, the dangers of which did not escape the Government.

But these forms of dictatorship were prescribed by no enactment. The abdication of the legislature was never more than a *de facto* situation. The public, and the Parliament itself, believed at that time that the war would be of short duration; they thought it unnecessary to remodel the fundamental rules of political life; why not simply leave them in abeyance? But in the mind of everyone such a régime could be only temporary. When it became evident that a long struggle was in prospect, the question arose whether the Government should endeavor to prolong or confirm the *de facto* position. The constitution required that the Parliament should meet at the beginning of January 1915. Should the Government attempt to reduce this meeting to a mere formality and ask for a fresh adjournment? Should it take the opportunity to obtain the grant of full powers? Or, again, should it propose a 'revision,' so as to set up a 'war government' in due form, by a modification of the principles of the constitution? The Cabinet of M. Viviani made no attempt of the sort. The dictatorship of the executive was born of the enthusiasm of the first moments of the war; it had had its day. The public had not forgotten the victory of the Marne, but neither had it forgotten its disillusion; parliamentary opinion was disturbed when the critical situation in respect of equipment and munitions became known in the middle of December 1914. Could the dictatorship, after all, present so favorable a balance-sheet? And so, while the forces in the trenches were preparing themselves for a long struggle, the political body set about its own reorganization. It is significant that it kept within the framework of the constitution and respected the forms of the normal régime.

2. From that time the constitution was observed, and the public powers resumed their proper rôles. The traditional rules were adapted without difficulty to the state of war, by adjustments of detail. The executive, it is true, enjoyed considerable advantages in its relations with the Parliament. The latter was unable to press its criticisms and questions too insistently; it felt that the great current of energy and enthusiasm which flowed from the country to the

front, from the nation to the army, left it on one side; it knew that it could not claim to play a prominent rôle.

But between 1915 and 1917 this supremacy of the executive was gradually effaced: during these three years the process of evolution was nearly continuous.

In 1915 the public activities of the Parliament had slackened, and interpellations were rare. All its energies were concentrated in the great committees. The investigations of the two Army Committees, their criticisms of the War Department, were the earliest form of parliamentary control, obscure and suppressed as that control was. Nevertheless, in the long run, their perseverance was successful. The resignation of M. Millerand from the Ministry of War in August 1915 was its direct result. A beginning had been made: under the pressure of this opposition, the 'war government' underwent the first stage of its modification, and tended to resume its 'civilian' character; that is to say that it bethought itself of restricting the autonomy which it had hitherto allowed to the Commander-in-Chief of its armies, and the share which it had granted to its military agents in the administration of the country. M. Briand's statements in the Chamber on the 'right of supervision' of the Council of Ministers over the conduct of the war, and the circular of M. Malvy concerning the application of the régime of the state of siege, were the two aspects of this same intention. Authority became more concentrated in the hands of those who were politically responsible to the Chambers.

In 1916 the pressure of the Parliament was intensified. Sittings became more numerous and interpellations more frequent. It was now that a new procedure was adopted, calculated to allow the Chambers to exercise a more active control. The Secret Committee gave interpellators the means of putting forward criticisms that could not be made public without detriment to the national cause; while it obliged the Government to furnish explanations which it had been in the habit of reserving for the sittings of the committees. At the same time, the introduction of control at the front met a demand that the great parliamentary committees had been pressing for eighteen months, and gave a new direction to their task of supervision. The Secret Committee and the commissioners at the front were the most striking among the new political features evolved by



the war government. Both were the political consequences of the battle of Verdun.

But the Chambers did not intend that this parliamentary control should enfeeble the action of the executive; they wished the Government to be accountable to them, but they also wished that Government to be firm of will and strong of hand. Was it possible to reconcile these wishes? From December 1916 to November 1917 successive Cabinets wished to do so. M. Briand, to meet the desire of the Parliament, 'tightened up' his Cabinet and organized the 'War Committee'; but he adhered very strictly to constitutional rules; and accordingly his 'Committee' possessed no powers of its own like those of the English 'War Cabinet'; this was made a ground of complaint. At the same time he asked the Chambers to grant him a 'delegation of legislative authority,' a law giving him 'full powers'; here he came into direct conflict with certain constitutional rules and powerful traditions, and met with a reverse. His prestige vanished and his moral authority was shaken, and he resigned because he realized this. The Cabinet of M. Ribot, and that of M. Painlevé, which followed, were very careful not to ask the Chambers for an extension of their powers; they accepted unreservedly the forms of control that had been inaugurated in 1916. It was now that the commissioners at the front obtained their definite legal status, that secret committees became frequent, that the Minister of Finance drew up, for the first time since 1914, a partial budget allowing the Chambers to exercise afresh their right of discussion and decision. But the Parliament showed no sign of gratitude. The Socialist opposition became more exacting; the *union sacrée* showed signs of weakening. For the first time since the beginning of the war, on the 14th November 1917, a Ministry resigned on a formal vote of the Parliament.

3. M. Clémenceau's Government returned to methods of firmness. It was supported by public opinion and incited to action by the political situation; previous cabinets had appeared more conscientious than energetic, and the public welcomed a program showing a determination to rule.

In reality this program scarcely touched the innovations introduced during the preceding years. The Clémenceau Cabinet maintained the War Committee and did not attempt to restrict control at the front. In the sphere of constitutional and governmental or-

ganization, it introduced only minor adjustments of the mechanism. It obtained, by the law of the 10th February 1918, the power of legislating by decree in the whole domain of the country's economic life; it suspended in certain districts the measures adopted by M. Malvy with reference to the state of siege; it endeavored to improve the coördination of the services and ministries by developing the secretariate of the Presidency of the Council, which it converted into an Under-Secretary's department. Above all it succeeded in keeping parliamentary criticism at a distance: the secret committee disappeared and with it the means of forcing the discussion of delicate questions, which might impair the authority of the Government. During the peace negotiations the executive managed to retain, in spite of protests, the full independence that the constitution conferred on it.

Why did the Parliament lend itself to this display of authority? No doubt the painful scandal of the judicial proceedings in which some of its members were involved obliged it to show a certain degree of prudence. But this is insufficient to explain so abrupt a change of attitude. It would seem that the breakdown of the *union sacrée* helped to bring about this new state of mind. When the Government was face to face with a Parliament over part of which it had in reality lost control, although there was still a pretense of agreement among the groups, it was naturally disposed to make concessions in order to rally the dissentients. But with M. Clémenceau in power, the Socialists adopted an attitude of open hostility; this relieved the Government from the necessity of dealing tenderly with them. It was all the more in a position to disregard them because it felt itself supported by the national will, which was weary of turbulent debates and disquieted by the Bolshevik success at Petrograd. A wave of confidence, springing from the very soul of the country, cleared the way for the Government and swept aside the whims of the parliamentary opposition and the hesitations of critical minds.

Authority, but within the framework of the constitution, was the peculiar feature of this régime. It had nothing in common with the procedure and the methods of the first months of the war, which made light of the traditional rules. M. Clémenceau did not swerve from the path marked out by the political constitution of the country: he did not attempt to close the parliamentary sessions; but he was in a position to impose his will on the Parliament. The forms were identi-

cal with those which existed in 1916 and 1917, but the spirit that animated them was different.

During these four years, in the course of the process of evolution that has been described above, the political forms remained unaltered. Amid the great belligerent States, none adhered so faithfully as France, during the emergency, to its traditions and constitutional principles. Her régime, which appeared so weak in face of the criticisms of 1913, adapted itself more easily than any other to the needs of the state of war. It merely changed its pace, within the very wide limits of the constitution, because it was dominated by a new spirit.

All this was not the doing of a few statesmen. No doubt they were wise enough to avoid any high-handed proceeding; they rested content with the powers that circumstances gave them, without attempting, as a rule, to embody them in definite enactments. The war régime remained, for everyone, an emergency régime; the experience acquired under it was to serve for the future, but the régime was not to be prolonged when the crisis was over. It was the country itself that enjoined this wise restraint. It must not be forgotten that the adaptation of French institutions was controlled by a profound movement of the soul of the nation; France was animated by a war-like spirit, which created conditions favorable to the action of the Government, and at the same time exerted a covert influence on the public authorities.

There was, in the first place, throughout the French people, a wave of devotion and self-sacrifice, an exact sense of what the individual owed to the commonwealth. This sentiment, which made it easy to bear so many sufferings, also manifested itself in a kind of surrender, much easier no doubt to acquiesce in, of political rights and liberties. The Government saw what it could ask of the country, and was confident of its support. Truth to tell, an impulse of this kind never endures for long; under cover of the *union sacrée*, many intrigues presently developed, which hampered parliamentary activity; the thirst for gain, under the cloak of the general interest, occasioned too many individual delinquencies. Nevertheless the moral conduct of the nation, as a whole, was consistently excellent. It put up readily with the discomforts and the restraints that the state of war introduced into its daily life.

The France of 1914 displayed, moreover, a change of mentality:

a desire for discipline and a desire for confidence. The spirit of perpetual criticism did not disappear, but its hold on the country was relaxed. It was not the Clémenceau of 1915 who won the acclamations of the public, but the Clémenceau of 1918, the man of action and vigorous will. This estrangement of the nation from its Parliament, sustained indeed by skilful propaganda, had its origin perhaps in nothing more than a difference of purpose: the members of the Parliament had retained their habits of jealous supervision and of distrust of the executive, and I am far from saying that in theory they were wrong; but the country was not grateful to them for it; it desired to keep its confidence in its chiefs. It is one of the characteristics of the warlike spirit that, even when it sees clearly, it banishes the critical sense. The mass of the country asks to be directed; it dislikes those who disturb its trust. The Government is in a strong position; never was the word of command more potent. The instinct of the mass is doubtless right, since it is concentration of strength for victory that is required.

It was these profound sentiments of the nation's collective soul, sentiments so foreign to all French habits, that supported the 'war government' and render it intelligible.



## APPENDIX

### List of Ministries and Under-Secretaryships of State.

#### I. *Ministries.*<sup>1</sup>

##### *Ministries that meet normal requirements.*

Agriculture<sup>2</sup>  
Colonies  
Commerce and Industry<sup>2</sup>  
Education and Fine Arts<sup>3</sup>  
Finance  
Foreign Affairs  
Interior  
Justice<sup>3</sup>  
Labor<sup>2</sup>  
Marine  
Public Works  
War

##### *New Ministries created during the war.*

Armament. Created 12th December 1916, abolished 26th November 1918.  
Industrial Reconstruction. Created 26th November 1916, abolished 20th January 1920.  
Liberated Districts. Created 16th November 1917 under the name of Ministry of Blockade and Liberated Districts; became Ministry of Liberated Districts, 24th December 1918; transformed into Under-Secretaryship, 18th April 1925.  
Supply. The supply services were attached to various Under-Secretaryships before being constituted a Ministry on the 20th March 1917; from the 16th November 1917 to the 20th January 1920, they were constituted a department of the Ministry of Agriculture.

#### II. *Under-Secretaryships.*<sup>4</sup>

Allowances and Relief (*Interior*). Created 12th September 1917, abolished 16th November 1917.

<sup>1</sup> As between one Cabinet and another, the functions of the several Ministries sometimes vary. These details will be dealt with in the *Répertoire* of M. Boutillier du Rétail in the French edition of this series.

<sup>2</sup> Combined in a single Ministry, 12th December 1916 to 20th March 1917.

<sup>3</sup> Combined in a single Ministry, 12th December 1916 to 20th March 1917.

<sup>4</sup> The name of the Ministry to which each was attached is added in italics.

- Artillery and Munitions (*War*). Created 20th May 1915, transformed 12th December 1916; see War Manufactures.
- Blockade (*Foreign Affairs*). Created 14th December 1916; constituted a Ministry jointly with the Liberated Districts 16th November 1917.
- Demobilization (*War*). Created 6th December 1918, abolished 27th November 1919.
- Finance*. Created 17th November 1917, abolished 20th January 1920.
- Financial Administrations (*Finance*). Created 14th December 1916, abolished 16th November 1917.
- Fine Arts (*Education*). Lasted until 16th November 1917.
- General Army Administration (*War*). Created 28th December 1916, abolished 20th January 1920.
- General Naval Administration (*Marine*). Created 10th August, abolished 16th November 1917.
- Health (*War*). Created 1st July 1915, abolished 20th January 1920.
- Interior*. Created 17th November 1917, abolished 20th January 1920.
- Inventions (*Armament*). Created 14th December 1916, abolished 16th November 1917.
- Labor (*Commerce*). Created 12th December 1916 to replace the abolished *Ministry of Labor*: maintained 20th March to 12th September 1917, although that Ministry had been reëstablished.
- Liquidation of Stocks (*Finance*). Created 5th February 1919, abolished 15th January 1922.
- Mercantile Marine (existed before the war). Abolished 26th August 1914; attached successively to *Public Works*, *Supply*, *Public Works* again, *Commerce*; abolished 28th November 1918.
- Military Aeronautics (*War*). Created 14th September 1915; abolished from 12th December 1916 to 20th March 1917; then reëstablished. It included Naval Aeronautics from 22nd November 1917.
- Military Justice (*War*). Created 17th November 1917, abolished 20th January 1920.
- Pensions and litigious business (*War*). Created 12th September 1917, attached to General Army Administration 17th November 1917.
- Presidency of the Council. Created 16th November 1917 and remained until 5th October 1922.
- Prohibitions (*Commerce*). Created 12th September 1917, abolished 16th November 1917.
- Supply (*Agriculture*). Created 17th November 1917, on abolition of *Ministry of Supply*. Attached to *Commerce* 25th January 1920, abolished 16th January 1921.

Supply and Commissariat (*War*). Created 1st July 1915, attached to Civil Supply (*Public Works*) 12th December 1916, later to Ministry of Supply.

Transport (*Public Works*). Created 14th December 1916; abolished 12th September 1917; reestablished 19th November 1918; transformed 20th January 1920.

War Manufactures (*Armament*). Created 14th December 1916, abolished 12th September 1917.

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This list which follows includes only those numbers which have been published and are in course of preparation; it is subject to change from time to time. The monographs fall into two main classes, those which may be said to constitute full numbers in the series, volumes of from 300 to 500 pages; and partial numbers or special studies of approximately 100 pages or less, which may ultimately be incorporated in full volumes along with others dealing with cognate subjects. Titles have been grouped to indicate the proposed volume arrangement, but this grouping cannot be regarded as final in the larger and more complicated series.

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